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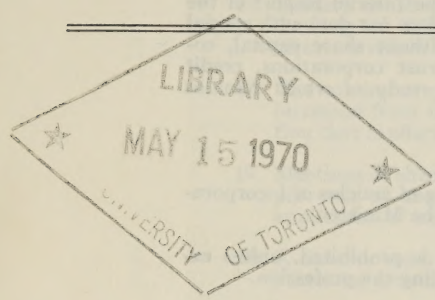




BILL 61

3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

76



The Business Corporations Act, 1970

MR. LAWRENCE (Carleton East)



## EXPLANATORY NOTE

The purpose of this Bill is to effect a complete revision of those Parts of *The Corporations Act* relating to the incorporation, operation, management and dissolution of ordinary Ontario corporations with share capital, in the light of the recommendation in the Interim Report of the Select Committee on Company Law. The Bill does not deal with special types of corporations, such as corporations without share capital, co-operatives, insurance corporations, loan and trust corporations, credit unions, and extra-provincial corporations, the study of which remains unfinished by the Select Committee.

The principal changes are as follows:

1. Incorporation is as of right by the filing of articles of incorporation and no longer in the discretion of the Minister.
2. Incorporation to practise a profession is prohibited, unless expressly permitted by the statute governing the profession.
3. A corporation need have only one shareholder.
4. The minimum number of directors is reduced from three to one in the case of a corporation that is not offering its securities to the public.
5. The distinction between public and private companies is abolished.
6. The doctrines of *ultra vires* and constructive notice are abolished as regards third parties dealing with a corporation.
7. Provision is made for establishing liability for pre-incorporation contracts.
8. It will no longer be necessary after the first year of a corporation's existence to call and hold a meeting of directors or shareholders to pass a by-law or resolution if such by-law or resolution is consented to in writing by all the directors or shareholders, as the case may be.
9. Mutual fund shares are expressly provided for.
10. A corporation is permitted to purchase its own common shares out of surplus and to resell them, subject to the insider trading provisions.
11. Partly-paid shares can no longer be issued.
12. A code of conduct for trustees under corporate trust indentures is established.
13. Article 8 of the Uniform Commercial Code, which provides for the negotiability of corporate securities, and defines the rights and obligations of issuers, transfer agents, transferors and transferees with respect to the issue, registration and transfer of corporate securities, is adopted.
14. Provision is made for the establishment of a central clearing corporation, whereby transfers of corporate securities can be effected merely by entries on the records of such corporation, eliminating the necessity for physical delivery of the actual certificates.
15. Shareholders are given the right, with leave of the court, to bring representative actions on behalf of a corporation to enforce any right that the corporation has, when the corporation refuses to bring action to enforce such right.



16. Dissenting shareholders can require a corporation to buy them out if the corporation disposes of its undertaking, amalgamates with another corporation or undergoes other fundamental corporate changes.
17. Holders of 10 per cent of the voting shares can requisition a meeting of shareholders to pass specific by-laws, where the directors refuse to pass them.
18. The minimum period of notice of meetings of shareholders is increased from ten to twenty-one days in the case of a corporation that is offering its securities to the public.
19. Meetings of shareholders can be requisitioned by the holders of 10 per cent of the voting shares and also by the court upon the application of any shareholder.
20. A director need no longer be a shareholder, unless the by-laws otherwise provide.
21. A quorum of the directors is given the right to call a meeting of directors at any time.
22. A statutory standard of conduct for directors and officers is prescribed.
23. The liability of directors for an improper declaration of dividends is extended to the cases of an improper purchase or redemption of shares and an improper loan or guarantee to shareholders. In certain circumstances individual shareholders may also be personally liable in such cases.
24. The liability of directors for wages of employees is extended from one to two years.
25. A director can be removed from office at any time by a majority vote of the shareholders.
26. A corporation can no longer indemnify its directors or officers in respect of the cost of legal actions taken against them as a result of their breach of duty.
27. A corporation is permitted, under proper safeguards, to use electronic or other devices to maintain its records.
28. Within two years after the Act comes into force, no person can act as auditor of a corporation if he, his partner, employer or any person related to him (as defined in the Act) owns directly or indirectly any securities of the corporation or of the holding corporation of such corporation.
29. The auditor of a corporation cannot be appointed its receiver or liquidator and cannot be the trustee in bankruptcy of the estate of such corporation.
30. The percentage necessary to remove an auditor during his term of office is reduced to a majority of the votes cast at a meeting of the shareholders, from the present two-thirds vote required.
31. Where an incumbent auditor is to be removed or replaced, he has the right to make representations to the shareholders, at the expense of the corporation, concerning his proposed removal or non-reappointment, prior to the meeting of shareholders at which such action is to be taken.
32. The auditor of a holding corporation has the right to inspect the records and to question the directors, officers and employees of each subsidiary thereof.

33. Any shareholder can require the attendance of an auditor at any shareholders' meeting at the corporation's expense.
34. It will no longer be possible for a corporation that is offering its securities to the public to omit from its annual audited financial statement or from its semi-annual interim financial statement the comparative statement for the corresponding previous period or the statement of source and application of funds.
35. The right of a shareholder of a holding corporation to examine true copies of financial statements of its subsidiaries is extended from the present case where the holding corporation does not consolidate its accounts to include the case where it does.
36. A corporation that is offering its securities to the public must appoint an audit committee of its directors, of whom a majority are not to be officers of the corporation, to which the annual financial statement must be submitted for review and before which the auditor has the right, and can be summoned, to appear.
37. The present right of the holders of 10 per cent of the issued capital of a corporation to apply to the court for the appointment of an inspector to investigate the affairs and management of the corporation is now conferred upon any shareholder. The court may also order the investigation of the affairs and management of any affiliate of the corporation. The powers of the inspector are amplified.
38. Two or more corporations proposing to amalgamate cannot do so if any of them is insolvent.
39. On a voluntary winding up, the court has the power to review the remuneration of the liquidator even where it has been fixed by the shareholders.
40. The period following dissolution of a corporation within which an application for revival can be made is extended from one to two years.
41. Actions and other proceedings can be brought against a corporation within two years after its dissolution to the same extent as if it had not been dissolved.
42. The period following dissolution of a corporation within which the shareholders may be liable to the creditors is extended from one to two years.
43. The penalties are revised.
44. The present right of a shareholder or creditor to apply to the court to require a corporation or any director or officer thereof to comply with the Act is extended to cover an application for an order of compliance with any provision of the articles of incorporation or by-laws of the corporation as well.
45. Applications to the court under the Act are to be heard by a judge of the Supreme Court of Ontario designated for that purpose by the Chief Justice of the High Court.
46. All decisions of the Minister under the Act are appealable as of right to the Court of Appeal.



BILL 61

1970

## The Business Corporations Act, 1970

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** In this Act,

Interpre-  
tation

1. "affiliate" means an affiliated body corporate within the meaning of subsection 4;
2. "articles of incorporation" or "articles" means the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which a corporation is incorporated, and includes any amendments thereto;
3. "associate", where used to indicate a relationship with any person, means,
  - i. any body corporate of which such person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the body corporate for the time being outstanding,
  - ii. any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity, or
  - iii. any relative or spouse of such person or any relative of such spouse who, in any such case, has the same home as such person;
4. "authorized capital" means the authorized capital as determined under section 24;

5. "body corporate" means any body corporate with or without share capital and whether or not it is a corporation to which this Act applies;
6. "certificate of incorporation" includes letters patent, a special Act or any other instrument by which a corporation is incorporated;
7. "certified copy" means,
  - i. in relation to a document of a corporation, a copy of the document certified to be a true copy under the seal of the corporation and signed by an officer thereof,
  - ii. in relation to a document issued by a court, a copy of the document certified to be a true copy under the seal of the court and signed by the registrar or clerk thereof,
  - iii. in relation to a document in the custody of the Department, a copy of the document certified to be a true copy under the seal of the Minister and signed by the Minister or by such officer of the Department as is designated by the regulations;
8. "Commission" means the Ontario Securities Commission;
9. "corporation" means a body corporate with share capital to which this Act applies;
10. "court" means the Supreme Court of Ontario presided over by one of those judges of the High Court who are designated by the Chief Justice of the High Court for the purpose of hearing applications under this Act;
11. "debt obligation" means a bond, debenture, note or other similar obligation of a body corporate, whether secured or unsecured;
12. "Department" means the Department of the Minister;
13. "equity share" means any share of any class of shares of a body corporate carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing;



14. "financial statement" means a financial statement referred to in section 172;
15. "insider" or "insider of a corporation" means,
  - i. any director or senior officer of a corporation that is offering its securities to the public,
  - ii. any person who beneficially owns, directly or indirectly, equity shares of such a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, but, in computing the percentage of voting rights attached to equity shares owned by an underwriter as defined in *The Securities Act, 1966*,<sup>1966, c. 142</sup> there shall be excluded any equity shares that have been acquired by him as underwriter in the course of distribution to the public of such shares, but such exclusion ceases to have effect on completion or cessation of the distribution to the public by him, or
  - iii. any person who exercises control or direction over the equity shares of such a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding;
16. "interim financial statement" means a financial statement referred to in section 185;
17. "issued capital" means the issued capital as determined under section 32;
18. "Minister" means the Minister of Financial and Commercial Affairs or such other member of the Executive Council to whom the administration of this Act may be assigned.
19. "officer" means the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager, or any other person designated an officer by by-law or by resolution of the directors;
20. "personal representative", where used with reference to holding shares in that capacity, means an executor, administrator, guardian, tutor, trustee, receiver or liquidator or the committee of or curator to a mentally incompetent person;

21. "prescribed" means prescribed by the regulations;
22. "regulations" means the regulations made under this Act;
23. "related person", where used to indicate a relationship with any person, means,
  - i. any relative or spouse of such person or any relative of such spouse who, in any such case, has the same home as such person, or
  - ii. any body corporate of which such person and any of the persons referred to in subparagraph i or the partner or employer of such person, either alone or in combination, beneficially owns, directly or indirectly, equity shares carrying more than 50 per cent of the voting rights attached to all equity shares of the body corporate for the time being outstanding;
24. "security" means any share of any class of shares or any debt obligation of a body corporate;
25. "senior officer" means,
  - i. the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other individual who performs functions for the corporation similar to those normally performed by an individual occupying any such office, and
  - ii. each of the five highest paid employees of a corporation, including any individual referred to in subparagraph i;
26. "special by-law" means a by-law that is not effective until it is,
  - i. passed by the directors of a corporation, and
  - ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the shareholders of the corporation duly called for that purpose, or such greater proportion of the votes cast as the articles provide, or, in lieu of such confirmation, by the consent in writing of all the shareholders entitled to vote at such meeting;

27. "special resolution" means a resolution that is not effective until it is,

- i. passed by the directors of a corporation, and
- ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the shareholders of the corporation duly called for that purpose, or such greater proportion of the votes cast as the articles provide, or, in lieu of such confirmation, by the consent in writing of all the shareholders entitled to vote at such meeting.

28. "warrant" means any document issued by a body corporate entitling the holder to purchase a security of the body corporate on specified terms. R.S.O. 1960, c. 71, s. 1; 1966, c. 28, ss. 1, 3, *part*; 1968-69, c. 16, s. 1 (1), *amended*.

(2) For the purposes of this Act, a body corporate shall be deemed to be a subsidiary of another body corporate if, <sup>Interpretation:</sup> <sub>but only if,</sub> subsidiary corporation

(a) it is controlled by,

- (i) that other, or
- (ii) that other and one or more bodies corporate each of which is controlled by that other, or
- (iii) two or more bodies corporate each of which is controlled by that other; or

(b) it is a subsidiary of a body corporate that is that other's subsidiary.

(3) For the purposes of this Act, a body corporate shall be deemed to be another's holding body corporate if, <sup>Holding corporation</sup> but only if, that other is its subsidiary.

(4) For the purposes of this Act, one body corporate shall be deemed to be affiliated with another body corporate if, <sup>Affiliated corporation</sup> but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. R.S.O. 1960, c. 71, s. 90 (1-3), *amended*.

(5) For the purposes of this Act, a body corporate shall be deemed to be controlled by another person or by two or more bodies corporate if, <sup>Control</sup> but only if,

- (a) shares of the first-mentioned body corporate carrying more than 50 per cent of the votes for the election



of directors are held, other than by way of security only, by or for the benefit of such other person or by or for the benefit of such other bodies corporate; and

- (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned body corporate. R.S.O. 1960, c. 71, s. 90 (4); 1966, c. 28, s. 12, *amended*.

Insider

(6) For the purposes of this Act,

- (a) every director or senior officer of a body corporate that is itself an insider of another body corporate shall be deemed to be an insider of such other body corporate;
- (b) an individual shall be deemed to own beneficially securities beneficially owned by a body corporate controlled by him or by an affiliate of such body corporate;
- (c) a body corporate shall be deemed to own beneficially securities beneficially owned by its affiliates; and
- (d) the acquisition or disposition by an insider of a put, call or other transferable option in respect of a security shall be deemed a change in the beneficial ownership of the security to which such transferable option relates. 1966, c. 28, s. 3, *part, amended*.

Insolvency

(7) For the purposes of this Act, a corporation is insolvent if its liabilities exceed the realizable value of its assets or if the corporation is unable to pay its debts as they become due.

Number of shareholders

(8) In determining the number of shareholders of a corporation, for the purposes of this Act, two or more persons holding the same share or shares jointly shall be counted as one shareholder.

Offering securities to public

(9) A corporation shall be deemed to be offering its securities to the public where,

1966, c. 142

- (a) a primary distribution to the public as defined in *The Securities Act, 1966* of any of its securities is made, whether within or outside Ontario, so long as any of such securities are outstanding or any securities into or for which such securities are converted or exchanged are outstanding; or
- (b) any of the shares of which are listed and posted for trading on any stock exchange within or outside Ontario. *New*.

**2.—**(1) This Act, except where it is otherwise expressly <sup>Application</sup> provided, applies,

- (a) to every corporation incorporated by or under a general or special Act of the Parliament of the former Province of Upper Canada;
- (b) to every corporation incorporated by or under a general or special Act of the Parliament of the former Province of Canada that has its head office and carries on business in Ontario and that was incorporated with objects to which the authority of the Legislature extends; and
- (c) to every corporation incorporated by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation incorporated for the construction and working of a railway, an incline railway or a street railway, or to a corporation within the meaning of *The Loan and Trust Corporations Act* except as provided by <sup>R.S.O. 1960, c. 222</sup> that Act. R.S.O. 1960, c. 71, s. 17.

(2) This Act does not apply to a corporation that, <sup>Idem</sup>

- (a) is a company within the meaning of *The Corporations Act* and has objects in whole or in part of a social nature; <sup>R.S.O. 1960, c. 71</sup>
- (b) is a corporation or company within the meaning of Part V of *The Corporations Act*;
- (c) is a corporation that is an insurer within the meaning of subsection 1 of section 143 of *The Corporations Act*;
- (d) is a corporation to which *The Credit Unions Act* <sup>R.S.O. 1960, c. 79</sup> applies. *New.*

#### INCORPORATION

**3.—**(1) A corporation may be incorporated under this <sup>Incorporation</sup> Act for any lawful objects to which the authority of the Legislature extends, except those of a corporation the incorporation of which is provided for in any other Act. R.S.O. 1960, c. 71, s. 3 (1), *amended.*

(2) Notwithstanding subsection 1, a corporation may be <sup>Idem</sup> incorporated under this Act with power to lend and invest money on mortgage of real estate or otherwise, or with power to accept and execute the office of liquidator, receiver, assignee, trustee in bankruptcy or trustee for the benefit of creditors and to accept the duty of and to act generally in the winding up of corporations, partnerships and estates, other than estates of deceased persons, and shall not by reason thereof be

R.S.O. 1960,  
c. 222 deemed to be a corporation within the meaning of *The Loan and Trust Corporations Act*, but the number of its shareholders, exclusive of persons who are in the employment of the company, shall be limited by its articles to five, and no such corporation shall issue debt obligations except to its shareholders, or borrow money on the security of its property except from its shareholders, or receive money on deposit or offer its securities to the public. R.S.O. 1960, c. 71, s. 3 (2); 1966, c. 28, s. 2, *amended*.

Professions (3) Where the practice of a profession is governed by an Act, a corporation may be incorporated to practise the profession only if such Act expressly permits the practice of such profession by a corporation and subject to the provisions of such Act. *New*.

Articles of  
incorpora-  
tion 4.—(1) One or more persons, being a body corporate or a natural person who is of the age of twenty-one years or more, may incorporate a corporation by signing and delivering to the Minister in duplicate articles of incorporation. *New*.

Contents of  
articles (2) The articles of incorporation shall set out,

1. The name of the corporation to be incorporated.
2. The period of duration of the corporation if other than perpetual.
3. The objects for which the corporation is to be incorporated.
4. The place in Ontario where the head office of the corporation is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district and the address giving the street and number, if any.
5. The authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share, or, where the shares are to be without par value, the consideration, if any, exceeding which each share may not be issued or the aggregate consideration, if any, exceeding which all the shares of each class may not be issued.
6. Where there are to be special shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to them or each class of them.
7. The restrictions, if any, to be placed on the transfer of its shares or any class thereof.



8. The number of directors of the corporation and the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the corporation.
9. The class and number of shares, if any, to be taken by each incorporator and the amount to be paid therefor.
10. The names in full, and the residence address, giving street and number, if any, of each of the incorporators.
11. Any other matter required by this Act or the regulations to be set out in the articles.

(3) The articles may set out any provision that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the corporation. R.S.O. 1960, c. 71, s. 18, *amended*.

(4) Where the articles name as a first director a person who is not an incorporator, the articles shall have attached thereto his written and signed consent to act as a first director.

(5) The signature of each incorporator and of each first director and the fact that each incorporator who is a natural person and each first director is of the age of twenty-one years or more shall be verified by affidavit. *New*.

5.—(1) If the articles conform to law and the approval of any person or body required by statute to approve the incorporation has been given, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the incorporators or their agent a certificate of incorporation to which he shall affix the other duplicate. *New*.

(2) A corporation comes into existence upon the date set forth in its certificate of incorporation. 1961-62, c. 21, s. 1, *amended*.

(3) A certificate of incorporation is conclusive proof that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act, except in a proceeding under section 250 to cancel the certificate for cause. R.S.O. 1960, c. 71, s. 9, *amended*.

## NAME

Use of  
word  
"Limited"

**6.**—(1) The name of a corporation shall have the word "Limited" or the abbreviation "Ltd." as the last word thereof. R.S.O. 1960, c. 71, s. 20 (1), *amended*.

Use of  
name

(2) Where a corporation or a director, officer or employee thereof uses the name of the corporation, the word "Limited" or its abbreviation "Ltd.", shall appear as the last word thereof.

Exception

(3) Stamping, writing, printing or otherwise marking on goods, wares or merchandise of the corporation or upon packages containing the goods, wares or merchandise shall not be deemed a use of the name within the meaning of subsection 2. R.S.O. 1960, c. 71, s. 21 (1, 2), *amended*.

Use of  
name

**7.** Notwithstanding section 6, a corporation may use its name in such form and in such language as the articles provide and as the Minister approves. 1964, c. 10, s. 1, *amended*.

Corporate  
name

**8.**—(1) The name of a corporation shall not,

- (a) be the same as or similar to the name of a known body corporate, association, partnership or individual whether in existence or not if its use would be likely to deceive, except where the body corporate, association, partnership or individual signifies its or his consent in writing to the use of the name in whole or in part, and, if required by the Minister,
  - (i) in the case of a body corporate, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles or amendment by which the name is acquired, or
  - (ii) in the case of an association, partnership or individual, undertakes to cease to carry on its or his business or activities, or change its or his name to a dissimilar name, within six months after the filing of the articles or amendment by which the name is acquired;
- (b) suggest or imply a connection with the Crown or the Government of Canada or the government of a municipality or any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government or municipality without the consent in writing of the appropriate authority;
- (c) where the objects applied for are of a political nature, suggest or imply a connection with a political party or a leader of a political party;

- (d) include the word "co-operative" or any abbreviation or derivation thereof;
- (e) contain any word or phrase that indicates or implies that it is incorporated for any object other than one or more of the objects set out in its articles;
- (f) contain any word or phrase or any abbreviation or derivation thereof, the use of which is prohibited or restricted under any other Act unless in the latter case the restrictions are complied with; or
- (g) in the opinion of the Minister, be objectionable on any public grounds.

(2) If a corporation through inadvertence or otherwise has acquired a name contrary to subsection 1, the Minister may, after he has given the corporation an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly. R.S.O. 1960, c. 71, s. 12 (1, 2), *amended*. Change of name if objectionable

(3) Where an undertaking referred to in clause *a* of subsection 1 is given by a corporation to which this Act applies and the undertaking is not carried out within the time specified, the Minister may, after giving the corporation an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly. Failure to perform undertaking

(4) Where an undertaking referred to in clause *a* of subsection 1 is given by a body corporate to which this Act does not apply or by an association, partnership or individual and the undertaking is not carried out within the time specified, the Minister may, after giving the corporation that acquired the name by virtue of such undertaking an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate, the articles are amended accordingly. *New*. Idem

9. A change in the name of a corporation does not affect its rights or obligations. R.S.O. 1960, c. 71, s. 13. Change not to affect rights, etc.

10.—(1) No person, partnership or association while not incorporated shall trade or carry on a business or undertaking under a name in which "Limited", "Incorporated" or "Corporation" or any abbreviation thereof is used. R.S.O. 1960, c. 71, s. 14, *amended*. Unauthorized use of "Limited", etc.



**Idem** (2) Where a corporation carries on business or identifies itself to the public in a name or style other than as provided in the articles, such name or style shall not include the word "Limited", "Incorporated" or "Corporation" or any abbreviation thereof. *New.*

**Reservation of name** **11.**—(1) Any person may, on application in writing and on the payment of the prescribed fee, reserve a corporate name for the use and benefit of the applicant or his nominee for a period of sixty days or such lesser period as he specifies, if the name is at the time not contrary to section 8. R.S.O. 1960, c. 71, s. 15, *amended.*

**Idem** (2) During the period for which a name has been reserved, no corporation shall acquire the name or a similar name without the consent in writing of the person for whose use and benefit the name has been reserved. *New.*

**Notice of name** **12.** An individual, partnership or association may notify the Minister of the name under which his or its business or undertaking is carried on, and thereupon the Minister shall make a notation thereof in his records. R.S.O. 1960, c. 71, s. 16, *amended.*

#### SEAL AND HEAD OFFICE

**Corporate seal** **13.**—(1) A corporation shall have a seal which shall be adopted and may be changed by resolution of the directors. R.S.O. 1960, c. 71, s. 292, *amended.*

**Idem** (2) The name of the corporation shall appear in legible characters on the seal. *New.*

**Head office** **14.**—(1) Subject to subsection 2, a corporation shall at all times have its head office at the place in Ontario where the articles provide that the head office is to be located.

**Change of head office** (2) A corporation may by special by-law change the municipality or geographic township in which its head office is located to another place in Ontario. R.S.O. 1960, c. 71, s. 290 (1, 2), *amended.*

**Where municipality annexed or amalgamated** (3) Where the location of the head office of a corporation is changed by reason only of the annexation or amalgamation of the place in which the head office is located to or with another municipality, such change does not constitute and has never constituted a change within the meaning of subsection 2. 1964, c. 10, s. 6.

**Filing of by-law** (4) The corporation shall, within ten days after a by-law passed under subsection 2 has been confirmed by the shareholders, file a certified copy of the by-law with the Minister. R.S.O. 1960, c. 71, s. 290 (3), *part, amended.*

(5) A corporation may by resolution of the directors change the location of its head office within a municipality or geographic township and shall, within ten days after the passing of the resolution, file with the Minister notice of the change giving the address including the street and number, if any, of the new location. *New.* Change of  
street  
address

(6) Failure to comply with subsection 4 or 5 does not affect the validity of the by-law or resolution. R.S.O. 1960, c. 71, s. 290 (4), *part, amended.* Validity

## POWERS

### *General*

**15.—**(1) Every corporation has power,

- (a) to have perpetual succession unless a limited period of duration is set out in its articles; Corporate  
character-  
istics
- (b) to contract and sue and be sued in its corporate name; and
- (c) to carry on business in or identify itself to the public by a name or style other than its corporate name. R.S.O. 1960, c. 191, s. 26 (a), *amended.*

(2) A corporation has power as incidental and ancillary to the objects set out in its articles,

- 1. to carry on any other business capable of being conveniently carried on in connection with its business or likely to enhance the value of or make profitable any of its property or rights; Incidental  
powers
- 2. to acquire or undertake the whole or any part of the business, property and liabilities of any person carrying on any business that the corporation is authorized to carry on;
- 3. to apply for, register, purchase, lease, acquire, hold, use, control, license, sell, assign or dispose of patents, patent rights, copyrights, trade marks, formulae, licences, inventions, processes, distinctive marks and similar rights;
- 4. to enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or body corporate carrying on or engaged in or about to carry on or engage in any business or transaction that the corporation is authorized to carry on or engage in or any business or transaction capable of being conducted so as to benefit the corporation, and to lend money to.

guarantee the contracts of, or otherwise assist any such person or body corporate, and to take or otherwise acquire securities of any such body corporate, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with the same;

5. to take or otherwise acquire and hold shares in any other body corporate having objects altogether or in part similar to those of the corporation or carrying on any business capable of being conducted so as to benefit the corporation;
6. to lend money to any other body corporate or any firm or person having dealings with the corporation or with whom the corporation proposes to have dealings or to any other body corporate any of whose shares are held by the corporation;
7. to apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege, that any government or authority or any body corporate or other public body may be empowered to grant, and to pay for, aid in and contribute toward carrying it into effect and to assume any liabilities or obligations incidental thereto;
8. to establish and support or aid in the establishment and support of associations, institutions, funds or trusts for the benefit of employees or former employees of the corporation or its predecessors, or the dependants or connections of such employees or former employees, and grant pensions and allowances, and make payments towards insurance or for any object similar to those set forth in this paragraph, and to subscribe or guarantee money for charitable, benevolent, educational or religious objects or for any exhibition or for any public, general or useful objects;
9. to promote any body corporate for the purpose of acquiring or taking over any of the property and liabilities of the body corporate or for any other purpose that may benefit the corporation;
10. to purchase, lease, take in exchange, hire or otherwise acquire any personal property and any rights or privileges that the corporation considers necessary or convenient for the purposes of its business;
11. to construct, maintain and alter any buildings or works necessary or convenient for its objects;



12. to acquire by purchase, lease or otherwise and hold any land or interest therein necessary for its actual use and occupation or for carrying on its undertaking, and, when no longer necessary therefor, to sell, alienate or convey it;
13. to take, hold and alienate real and personal property that has in good faith been mortgaged to the corporation by way of security for, or conveyed to it in satisfaction of, debts previously contracted in the course of its business, or purchased at judicial sales upon levy for such indebtedness, or otherwise purchased for the purpose of avoiding a loss to the corporation;
14. to construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences that may advance the interests of the corporation, and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
15. to raise and assist in raising money for, and aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person or body corporate with whom the corporation has business relations or any of whose securities are held by the corporation, and guarantee the performance or fulfilment of any contracts or obligations of any such person or body corporate, and in particular guarantee the payment of the principal of and interest on the debt obligations of any such person or body corporate;
16. to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable instruments;
17. where authorized to do so by a special resolution, to sell, lease, exchange or otherwise dispose of the undertaking of the corporation or any part thereof as an entirety or substantially as an entirety for such consideration as the corporation thinks fit;
18. to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with the property of the corporation in the ordinary course of its business;

19. to adopt such means of making known the products of the corporation as may seem expedient, and in particular by advertising, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes and rewards and making donations;
20. to cause the corporation to be registered and recognized in any foreign jurisdiction or any province or territory of Canada, and designate persons therein according to the laws of that foreign jurisdiction or that province or territory of Canada to represent the corporation and to accept service for and on behalf of the corporation of any process or suit;
21. to allot and issue fully-paid shares of the corporation in payment or part payment of any property purchased or otherwise acquired by the corporation or for any past services performed for the corporation;
22. to distribute among the shareholders of the corporation in cash, kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner deemed advisable, any property of the corporation, but not so as to decrease the capital of the corporation unless the distribution is made for the purpose of enabling the corporation to be dissolved or the distribution, apart from this paragraph, would be otherwise lawful;
23. to establish agencies and branches;
24. to take or hold mortgages, hypothecs, liens and charges to secure payment of the purchase price, or of any unpaid balance of the purchase price, of any part of the property of the corporation of whatsoever kind sold by the corporation, or for any money due to the corporation from purchasers and others and to sell or otherwise dispose of any such mortgage, hypothec, lien or charge;
25. to pay all costs and expenses of or incidental to the incorporation and organization of the corporation;
26. to invest and deal with the moneys of the corporation not immediately required for the objects of the corporation in such manner as may be determined;

27. to do any of the things authorized by this subsection and all things authorized by its articles as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;

28. to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the corporation. R.S.O. 1960, c. 71, ss. 22 (1), 288, *amended*.

(3) Any of the powers set out in subsection 2 may be withheld or limited by the articles. R.S.O. 1960, c. 71, s. 22 (2), *amended*. Limited by articles

(4) Every corporation may exercise its powers beyond the boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights. R.S.O. 1960, c. 71, s. 287, *amended*. Power to act outside Ontario

**16.**—(1) No act of a corporation and no transfer of real or personal property to or by a corporation, otherwise lawful, that is heretofore or hereafter done or made, is invalid by reason of the fact that the corporation was without capacity or power to do such act or make or receive such transfer, but such lack of capacity or power may be asserted, Acting outside powers

(a) in a proceeding against the corporation by a shareholder under subsection 2;

(b) in a proceeding by the corporation, whether acting directly or through a receiver, liquidator, trustee or other legal representative or through shareholders in a representative capacity, against a director or officer or former director or officer of the corporation; or

(c) as cause for the cancellation of the certificate of incorporation of the corporation under section 250.

(2) A shareholder of a corporation may apply to a court of competent jurisdiction for an order to restrain the corporation from doing any act or transferring or receiving the transfer of real or personal property on the ground that the corporation lacks capacity or power for the purpose, and the court may, if it deems it to be just and equitable, grant an order prohibiting the corporation from doing the act or transferring or receiving the transfer of the real or personal property, but, where the act or transfer sought to be restrained or prohibited is being or to be done or made under a contract to which the corporation is a party, Restraining order



- (a) all the parties to the contract shall be parties to the proceeding;
- (b) the court in granting the order may set aside the contract and allow the corporation or other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the granting of the order and setting aside of the contract, other than anticipated profits from the contract. *New.*

Loans to  
shareholders  
and  
directors

**17.—**(1) Except as provided in subsection 2, a corporation shall not,

- (a) make loans to any of its shareholders or directors; or
- (b) give, directly or indirectly, by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase made or to be made by any person of any shares of the corporation.

Exceptions

(2) A corporation may,

- (a) make loans to any of its shareholders or directors in the ordinary course of its business where the making of loans is part of the ordinary business of the corporation;
- (b) make loans to *bona fide* full-time employees of the corporation whether or not they are shareholders or directors, with a view to enabling them to purchase or erect dwelling houses for their own occupation, and may take from such employees mortgages or other security for the repayment of such loans;
- (c) provide, in accordance with a scheme for the time being in force, money by way of loan for the purchase of or subscription for shares of the corporation by trustees, to be held by or for the benefit of *bona fide* employees of the corporation, whether or not they are shareholders or directors; or
- (d) make loans to *bona fide* employees of the corporation, other than directors, whether or not they are shareholders, with a view to enabling them to purchase or subscribe for shares of the corporation to be held by them by way of beneficial ownership.

(3) The power mentioned in clause *b*, *c* or *d* of subsection 2 may be exercised only under the authority of a special by-law. <sup>By special by-law only</sup>  
R.S.O. 1960, c. 71, s. 23 (1, 2), *amended*.

### *Contracts*

**18.**—(1) A contract that if entered into by an individual person would be by law required to be in writing and under seal may be entered into on behalf of a corporation in writing under the seal of the corporation. <sup>Contracts in writing under seal</sup>

(2) A contract that if entered into by an individual person would be by law required to be in writing signed by the parties to be charged therewith may be entered into on behalf of a corporation in writing signed by any person acting under its authority, express or implied. <sup>Contracts in writing not under seal</sup>

(3) A contract that if entered into by an individual person would be by law valid although made by parol only and not reduced into writing may be entered into by parol on behalf of a corporation by any person acting under its authority, express or implied. R.S.O. 1960, c. 71, s. 293, *amended*. <sup>Parol contracts</sup>

**19.** A corporation may, by writing under seal, empower any person, either generally or in respect of any specified matters, to execute, as its attorney and on its behalf in any place within or outside Ontario, documents to which it is a party in any capacity and that are required by law to be under seal, and every document signed by such attorney on behalf of the corporation acting within the scope of his authority, express or implied, and under his seal binds the corporation and has the same effect as if it were under the seal of the corporation. R.S.O. 1960, c. 71, s. 294, *amended*. <sup>Power of attorney</sup>

**20.**—(1) In this section,

<sup>Interpre-  
tation</sup>

- (a) “contractor” means a person who enters into a pre-incorporation contract in the name of or on behalf of a corporation before its incorporation;
- (b) “other party” means a person with whom a contractor enters into a pre-incorporation contract;
- (c) “pre-incorporation contract” means a contract entered into by a contractor in the name of or on behalf of a corporation before its incorporation.

(2) A corporation may adopt a pre-incorporation contract entered into in its name or on its behalf, and thereupon the corporation is entitled to the benefits and is subject to the <sup>Adoption of pre-incorporation contracts</sup>

liabilities that were contracted in its name or on its behalf and the contractor ceases to be entitled to such benefits or to be subject to such liabilities.

Non-  
adoption  
of pre-  
incor-  
poration  
contracts

(3) Where a pre-incorporation contract is not adopted by a corporation, the contractor is entitled to the benefits and subject to the liabilities under the contract and is entitled to recover from the corporation the value of any benefit received by the corporation under the contract.

Application  
to court  
for relief

(4) Whether or not a pre-incorporation contract is adopted by the corporation, the other party may apply to the court which may, notwithstanding subsections 2 and 3, make an order fixing or apportioning liability as between the contractor and the corporation in any manner the court considers just and equitable under the circumstances. R.S.O. 1960, c. 71, s. 286, *amended*.

### *By-laws and Resolutions*

By-laws

**21.—**(1) The directors may pass by-laws not contrary to this Act or to the articles to regulate,

- (a) the allotment and issue of shares, the payment thereof, the issue of share certificates, the transfer and the registration of transfers of shares;
- (b) the declaration and payment of dividends;
- (c) the qualification and remuneration of the directors;
- (d) the time for and the manner of election of directors;
- (e) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (f) the time and place and the notice to be given for the holding of meetings of shareholders and of the board of directors, the quorum at meetings of shareholders, the requirements as to proxies, and the procedure in all things at shareholders' meetings and at meetings of the board of directors;
- (g) the conduct in all other particulars of the affairs of the corporation.



(2) Subject to section 22, a by-law passed under subsection 1 and a repeal, amendment or re-enactment thereof is effective from the time of its passing if it is confirmed, with or without variation, at a general meeting of the shareholders duly called for that purpose or at the next annual meeting of the shareholders, whichever is held first. Confirmation

(3) The shareholders may, at the general meeting or the annual meeting mentioned in subsection 2, confirm, reject, amend or otherwise deal with any by-law passed by the directors and submitted to the meeting for confirmation, but no act done or right acquired under any such by-law is prejudicially affected by any such rejection, amendment or other dealing. R.S.O. 1960, c. 71, s. 67 (1, 3), *amended*. Powers  
re con-  
firmation

(4) Where a by-law or repeal, amendment or re-enactment thereof is not confirmed at a meeting as required by subsection 2, it has effect from the time of its passing until the meeting but not thereafter, and no subsequent by-law, repeal, amendment or re-enactment of the same or similar substance has any effect until it is confirmed at a general meeting of the shareholders duly called for that purpose. R.S.O. 1960, c. 71, s. 67 (2), *amended*. Rejection

**22.**—(1) A by-law relating to the remuneration of a director as director shall fix the remuneration and the period for which it is to be paid. *New*. Remunera-  
tion of  
directors

(2) A by-law passed under subsection 1 is not effective until it is confirmed at a general meeting of the shareholders duly called for that purpose. R.S.O. 1960, c. 71, s. 68. Confirmation

**23.**—(1) Any by-law or resolution consented to at any time during a corporation's existence by the signatures of all the directors is as valid and effective as if passed at a meeting of the directors duly called, constituted and held for that purpose. By-laws  
and  
resolutions

(2) Any resolution, other than a resolution that is required by this Act to be passed at an annual meeting, consented to at any time during a corporation's existence by the signatures of all the shareholders entitled to vote at a meeting of shareholders is as valid and effective as if passed at a meeting of the shareholders duly called, constituted and held for that purpose. Idem

(3) Any by-law or resolution passed by the directors at any time during a corporation's existence may, in lieu of confirmation at a general meeting of shareholders, be confirmed in writing by all the shareholders entitled to vote at such meeting. Alternative  
method of  
confirming  
by-laws

Evidentiary  
value of  
signatures

(4) Where a by-law or resolution purports to have been consented to or confirmed under this section by the signatures of all the directors or shareholders, as the case may be, of the corporation, the signatures to the by-law or resolution are admissible in evidence as *prima facie* proof of the signatures of the directors or shareholders, as the case may be, that they purport to represent and are admissible in evidence as *prima facie* proof that the signatories to the by-law or resolution were all the directors or all the shareholders entitled to vote at meetings of shareholders, as the case may be, at the date that the by-law or resolution purports so to have been consented to or confirmed. R.S.O. 1960, c. 71, s. 311, *amended*.

## SHARES

### *Authorized Capital*

Authorized  
capital

**24.**—(1) The authorized capital of a corporation shall be divided into shares with par value or without par value or both and may consist of shares of more than one class.

Par  
shares

(2) Where all the shares of a corporation are with par value, its authorized capital shall be expressed in Canadian or other currency in its articles, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of shares of each class multiplied by the par value thereof. R.S.O. 1960, c. 71, s. 24 (1, 2), *amended*.

No par  
shares

(3) Where all the shares of a corporation are without par value, its authorized capital shall be expressed in its articles as a specified number of shares.

No par  
and par  
shares

(4) Where part of the shares of a corporation are with par value and part are without par value, its authorized capital shall be expressed in its articles as a specified number of shares of each class of shares having a specified par value and a specified number of shares of each class of shares without par value. R.S.O. 1960, c. 71, s. 24 (3), *amended*.

Considera-  
tion for  
no par  
shares

**25.**—(1) Where all the shares of a corporation are without par value or where part of its shares are with par value and part are without par value, the articles may provide,

- (a) that each share without par value shall not be issued for a consideration; or
- (b) the shares of each class of shares without par value shall not be issued for an aggregate consideration,

exceeding in amount or value a stated amount in Canadian or other currency, and the articles may provide, in addition, that such share or shares may be issued for such greater amount as the board of directors of the corporation by resolution determines.

(2) A resolution referred to in subsection 1 is not effective until, Resolution increasing aggregate consideration for no par shares

(a) a certified copy thereof has been filed with the Minister;

(b) all prescribed fees have been paid; and

(c) the Minister has so certified. R.S.O. 1960, c. 71, s. 24 (4), *amended*.

**26.**—(1) The common shares of a corporation shall be shares to which there is attached no preference, right, condition, restriction, limitation or prohibition set out in the articles of the corporation, other than a restriction on the allotment, issue or transfer. Common shares

(2) Where a corporation has one class of shares, that class shall be common shares and designated as provided in the articles. *New.* Classes of shares

(3) Where a corporation has more than one class of shares, one class shall be common shares, designated as provided in the articles, and the other shares shall be special shares and may consist of one or more classes of special shares and shall have attached thereto the designations, preferences, rights, conditions, restrictions, limitations or prohibitions set out in the articles. Idem

(4) No class of special shares shall be designated as preference shares or by words of like import, unless that class has attached thereto a preference or right over the common shares. R.S.O. 1960, c. 71, s. 27 (1), *amended*. Preference shares

**27.**—(1) Each class of special shares may have attached to it preferences, rights, conditions, restrictions, limitations or prohibitions, including but not limited to, Special shares

(a) the right to cumulative, non-cumulative or partially cumulative dividends;

(b) a preference over any other class or classes of shares as to the payment of dividends;



- (c) a preference over any other class or classes of shares as to repayment of capital upon the dissolution of the corporation or otherwise;
  - (d) the exclusive right to elect part of the board of directors;
  - (e) the right to convert the shares of that class into shares of another class or classes of shares;
  - (f) the right of the corporation at its option to redeem all or part of the shares of that class;
  - (g) the purchase for cancellation by the corporation of all or part of the shares of that class by agreement with the holders thereof at the lowest price at which, in the opinion of the directors, such shares are obtainable, but not exceeding an amount stated in or determined by the articles;
  - (h) conditions, restrictions, limitations or prohibitions on the right to vote at meetings of shareholders.
- R.S.O. 1960, c. 71, s. 27 (1, 2), *amended*.

Valuation  
of shares

(2) Any provision in the articles under clause *c* or *f* of subsection 1 shall set out the method by which the amount to be paid in respect of each share of the class is to be determined.

*New.*

Equality  
of shares  
of a class

**28.** Except as provided in section 29, each share of a class shall be the same in all respects as every other share of that class. R.S.O. 1960, c. 71, s. 25.

Special  
shares in  
series

**29.—**(1) The articles of a corporation may authorize the issue from time to time in one or more series of the special shares of a class and may authorize the directors to fix from time to time before such issue the designation, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to the shares of each series of the class.

Voting  
rights

(2) The shares of all series of the same class of special shares shall carry the same voting rights or the same restrictions, conditions, limitations or prohibitions on the right to vote.

Proportionate  
abatement

(3) Where any dividends or amounts payable on a repayment of capital are not paid in full, the shares of all series of the same class of special shares shall participate rateably in respect of such dividends, including accumulations, if any,

in accordance with the sums that would be payable on such shares if all such dividends were declared and paid in full, and on any repayment of capital in accordance with the sums that would be payable on such repayment of capital if all sums so payable were paid in full. R.S.O. 1960, c. 71, s. 28 (1-3), *amended*.

**30.**—(1) The articles may set forth the designation, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the first series to be issued in which case the special shares of the first series may be issued in accordance with the articles. Provision for first series in articles

(2) A series, other than one to which subsection 1 applies, shall not be issued until, Conditions to issue of series

- (a) the directors have by resolution fixed the designation, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the special shares of the series; and
- (b) the statement referred to in section 31 has been filed with the Minister and the certificate of the Minister has been issued under section 31. R.S.O. 1960, c. 71, s. 28 (4, 5), *amended*.

**31.**—(1) For the purpose of bringing a resolution passed by the directors under subsection 2 of section 30 into effect the corporation shall deliver to the Minister, within six months after the resolution has been passed, a statement in duplicate executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation, and verified by affidavit of one of the officers or directors signing the statement, setting out, Filing of statement

- (a) the name of the corporation;
- (b) a certified copy of the resolution;
- (c) that the resolution was duly passed by the directors;
- (d) the date of the passing of the resolution; and
- (e) that the conditions, if any, contained in the articles or in any prior resolution precedent to the creation and issue of the shares of the series have been complied with.

(2) If the statement conforms to law, the Minister shall, when all prescribed fees have been paid, Issuance of certificate

- (a) endorse on each duplicate of the statement the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of the filing to which he shall affix the other duplicate.

Effect of  
certificate

(3) Upon the issuance of the certificate of filing the resolution becomes effective and constitutes an amendment to the articles. *New.*

### *Issued Capital*

Issued  
capital,  
par value  
shares:

**32.**—(1) Where all the shares of a corporation are with par value, its issued capital shall be expressed in Canadian or other currency, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of issued shares of each class multiplied by the par value thereof less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act.

no par  
value  
shares, etc.

(2) Where the shares of a corporation are without par value or where part of its shares are with par value and part are without par value, its issued capital shall be expressed in Canadian or other currency, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of issued shares of each class with par value multiplied by the par value thereof, together with the amount of the consideration for which the shares without par value from time to time outstanding were issued and together with such amounts as from time to time by by-law of the corporation may be transferred thereto and less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act. R.S.O. 1960, c. 71, s. 30 (1, 2), *amended.*

Cancellation  
of par  
share:

**33.**—(1) Where an issued share of a class with par value is cancelled, the issued capital is decreased by an amount equal to the par value of the shares of that class. *New.*

of no par  
share

(2) Where an issued share of a class without par value is cancelled, the issued capital is decreased by an amount equal to the amount obtained by dividing,

- (a) that part of the issued capital attributable to that class of shares in accordance with subsection 2 of section 32,

by



- (b) the number of issued shares of that class. R.S.O. 1960, c. 71, s. 35, *amended*.

(3) Where a fraction of an issued share of a class is cancelled, the issued capital is decreased by an amount that bears the same proportion to the amount determined under subsection 1 or 2, as the case may be, that the fraction bears to a whole share of that class. *New*.

*Redemption, Purchase, Conversion and Surrender*

**34.**—(1) Where the shares of a class of special shares are made redeemable by the articles and part only of the special shares are to be redeemed, the shares to be redeemed shall be selected,

- (a) by lot in such manner as the board of directors determines;
- (b) as nearly as may be in proportion to the number of special shares of the class registered in the name of each shareholder; or
- (c) in such other manner as the board of directors determines with the consent of the holders of special shares of the class obtained in the manner set out in subsection 2,

but the articles may confine the manner of selection to that set out in clause *a* or in clause *b*.

(2) Where shares of a class of special shares are selected in the manner referred to in clause *c* of subsection 1, the selection shall be consented to in writing by,

- (a) all the holders of the special shares of the class; or
- (b) at least 95 per cent of the holders of the special shares of the class holding at least 95 per cent of the issued shares of that class if, after twenty-one days notice has been given by sending notice to each of the holders of shares of that class addressed to him at his latest address as shown on the records of the corporation, none of the holders of shares of that class dissents in writing to the corporation. R.S.O. 1960, c. 71, s. 27 (7, 8), *amended*.

(3) Where a holder of redeemable special shares of a corporation that is not offering its securities to the public dies or leaves its employment, notwithstanding subsection 1, it may within one year of such event redeem all or any of the special shares held by him. R.S.O. 1960, c. 71, s. 27 (9), *amended*.

Purchase of  
special  
shares for  
cancellation

**35.**—(1) Where the shares of a class of special shares are made purchasable for cancellation by the articles, then, except where the purchase is made on the open market or all the holders of the class consent to the purchase, the corporation may purchase the shares only pursuant to tenders received by the corporation upon request for tenders addressed to all the holders of the shares of the class, and the corporation shall accept only the lowest tenders. R.S.O. 1960, c. 71, s. 27 (11), *amended*.

Idem

(2) Where, in response to the invitation for tenders, two or more shareholders submit tenders at the same price and the tenders are accepted by the corporation as to part only of the shares offered, the corporation shall accept part of the shares offered in each tender in proportion as nearly as may be to the total number of shares offered in each tender. *New*.

Conversion  
of par  
shares to  
par shares

**36.**—(1) The articles of a corporation shall not provide for the conversion of shares with par value into shares with par value if the aggregate par value of the shares being converted is not equal to the aggregate par value of the shares into which they are converted.

par shares  
to no par  
shares

(2) Where, in accordance with the articles, shares with par value are converted into shares without par value, the issued capital of the corporation attributable to the shares resulting from the conversion shall be equal to the aggregate par value of the shares converted.

no par  
shares to  
par shares

(3) Where the articles provide for the conversion of shares without par value into shares with par value, no such share shall be converted unless that part of the issued capital attributable to the shares being converted is equal to the aggregate par value of the shares resulting from the conversion.

no par  
shares to  
no par  
shares

(4) Where, in accordance with the articles, shares without par value are converted into shares without par value, the issued capital shall remain unchanged. R.S.O. 1960, c. 71, s. 27 (15), *amended*.

of special  
shares

(5) Where special shares of a class are converted into the same or another number of shares of another class or classes, whether special or common, the shares converted thereupon become the same in all respects as the shares of the class or classes respectively into which they are converted, and the number of shares of each class affected by the conversion is changed and the articles are amended accordingly. R.S.O. 1960, c. 71, s. 27 (14).

Surrender  
of mutual  
fund shares

**37.**—(1) Where the only undertaking of a corporation is the business of investing the funds of the corporation, its articles may provide for the issuing of one or more classes of

mutual fund shares that have attached thereto conditions requiring the corporation to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof.

(2) Articles that provide for the issuing of mutual fund shares shall set out the conditions governing, Conditions and price

(a) the surrender of mutual fund shares or any fractions or parts thereof; and

(b) the determination of the price to be paid therefor and the manner and time of payment thereof. *New.*

**38.**—(1) A corporation shall not redeem or purchase special shares or accept mutual fund shares for surrender if the corporation is insolvent or if the redemption, purchase or surrender would render the corporation insolvent. Redemption, purchase or surrender while insolvent

(2) Special shares that are redeemed or purchased by a corporation are thereby cancelled, and the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly. R.S.O. 1960, c. 71, s. 27 (12, 13), *amended*. Cancellation on redemption, purchase or surrender

(3) Where mutual fund shares are accepted for surrender by a corporation, the shares are not thereby cancelled, and the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. *New.* Idem: mutual funds

**39.**—(1) Where authorized in its articles and subject to any restrictions contained therein, a corporation may purchase any of its common shares out of surplus. Purchase of common shares out of surplus:

(2) A corporation may purchase any of its common shares out of issued capital if the purchase is made, out of capital

(a) for the purpose of eliminating fractions of shares; or

(b) for the purpose of collecting or compromising indebtedness to the corporation.

(3) A corporation shall not purchase common shares under subsection 1 or 2 if the corporation is insolvent or if the purchase would render the corporation insolvent. Purchase while insolvent

(4) No purchase of common shares shall be made under this section by a corporation unless the purchase is authorized by an express resolution of the board of directors. Authorization



Method

(5) Where a corporation purchases its common shares under this section, the purchase shall be made,

- (a) by invitation addressed to all shareholders for tenders of shares and *pro rata* from the shares so tendered; or
- (b) from *bona fide* full-time employees and former employees of the corporation; or
- (c) where the corporation is offering its shares to the public, by purchase on the open market. *New.*

Cancellation  
or resale

**40.**—(1) Where common shares are purchased by a corporation under subsection 1 of section 39,

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the corporation are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
  - (i) the board of directors may at the time of the purchase cancel the shares, in which case the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly; or
  - (ii) the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation.

Cancellation

(2) Common shares or fractions thereof purchased under subsection 2 of section 39 are thereby cancelled and the authorized and issued capital are thereby decreased and the articles are amended accordingly. *New.*

Corporation  
insider re  
purchase  
and resale  
of own  
shares

**41.** Where a corporation purchases common shares under subsection 1 of section 39 or resells them under subclause ii of clause *b* of subsection 1 of section 40, the corporation shall be deemed to be an insider in respect of the purchase or resale, and sections 148 to 152 apply to the purchase or resale. *New.*

Perform-  
ance of  
agreement  
to purchase  
common  
shares

**42.** An agreement for the purchase by a corporation of its common shares is not invalid or unenforceable because of the possibility that the corporation may not be able to comply with section 39, but such agreement is,

- (a) subject to subsection 2 of section 135, valid if performed; and

- (b) if not performed, valid and enforceable to the extent the corporation is able to purchase its common shares at the time for performance. *New.*

**43.**—(1) A corporation may accept from any shareholder a donation of any of its shares without any repayment of capital in respect thereof. *Donation of shares*

(2) Shares accepted under subsection 1 are not thereby cancelled, and the board of directors may sell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. *Sale of donated shares* *New.*

### *Allotment, Issue and Transfer*

**44.**—(1) In the absence of a provision to the contrary in the articles or by-laws of the corporation, shares may be allotted and issued at such times and in such manner and to such persons or class of persons as the directors determine. *Issue of shares*

(2) Shares with par value shall not be allotted or issued except for a consideration at least equal to the product of the number of shares allotted or issued multiplied by the par value thereof. *Consideration for par shares*

(3) Subject to section 25, shares without par value shall not be allotted or issued except for such consideration as is fixed by the directors. *Consideration for no par shares*

(4) No share shall be issued until it is fully paid and a share is not fully paid until all the consideration therefor in cash, property or services, as determined under this section, has been received by the corporation. *Fully-paid shares*

(5) For the purposes of subsection 4 and paragraph 21 of subsection 2 of section 15 a document evidencing indebtedness does not constitute property and services shall be past services actually performed for the corporation, and the value of property or services shall be the value the directors determine by express resolution to be in all the circumstances of the transaction the fair equivalent of the cash value. R.S.O. 1960, c. 71, s. 31, *amended*. *Idem*

**45.**—(1) A corporation may provide by special by-law for the payment of commissions or allowing discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the corporation, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares, but, except in the case of mining, gas or oil corporations or corporations at least 75 per cent of whose assets are of a wasting character, no such commission or discount shall exceed 25 per cent of the amount of the subscription price. *Commission on sale of shares*

**No unauthorized commissions** (2) Except as provided in subsection 1, no corporation shall apply any of its shares or capital, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares of the corporation or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares, whether the shares or capital is so applied by being added to the purchase money of any property acquired by the corporation or to the contract price of any work to be executed for the corporation, or is paid out of the nominal purchase money or contract price or otherwise. R.S.O. 1960, c. 71, s. 32, *amended*.

**Shares personal property** **46.** The shares of a corporation are personal property. R.S.O. 1960, c. 71, s. 38, *amended*.

**Restrictions on transfer** **47.**—(1) A corporation shall not impose restrictions on the transfer of shares except such restrictions as are authorized by the articles. R.S.O. 1960, c. 71, s. 39 (1), *amended*.

**No public offer if transfer restricted** (2) A corporation that has imposed restrictions on the transfer of its shares shall not offer its shares to the public unless the restrictions are necessary,

(a) by or under any Act of Canada or Ontario as a condition to the obtaining, holding or renewal of authority to engage in any activity necessary to its undertaking; or

(b) for the purpose of achieving or preserving its status as a Canadian corporation for the purpose of any Act of Canada or Ontario. *New*.

**Lien for indebtedness** (3) Except in the case of shares listed on a stock exchange recognized by the Commission, where the articles or by-laws so provide the corporation has a lien to the extent of the debt on the shares registered in the name of a shareholder who is indebted to the corporation. R.S.O. 1960, c. 71, s. 39 (3), *amended*.

**Subsidiaries not to hold shares of holding corporations** **48.**—(1) Except in the cases mentioned in this section, a corporation shall not be a shareholder of a corporation that is its holding corporation, and any allotment or transfer of shares of a corporation to its subsidiary corporation is void.

**Application** (2) This section does not apply to a subsidiary holding shares as personal representative unless the holding corporation or a subsidiary thereof is beneficially interested under a trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.



(3) This section does not prevent a subsidiary that on the 30th day of April, 1954, held shares of its holding corporation from continuing to hold such shares, but, subject to subsection 2, the subsidiary has no right to vote at meetings of shareholders of the holding corporation or at meetings of any class of shareholders thereof. Exception

(4) Subject to subsection 2, subsections 1 and 3 apply in relation to a nominee for a corporation that is a subsidiary as if the references in subsections 1 and 3 to such a corporation included references to a nominee for it. R.S.O. 1960, c. 71, s. 94. Nominees

### *Share Certificates*

**49.**—(1) Every shareholder is entitled to a share certificate in respect of the shares held by him, signed by the proper officers in accordance with the corporation's by-laws in that regard, but the corporation is not bound to issue more than one share certificate in respect of a share or shares held jointly by several persons, and delivery of a share certificate to one of several joint shareholders is sufficient delivery to all. Share certificates

(2) A corporation may charge a fee of not more than \$1 for every share certificate issued, except that, in the case of the allotment and issue of shares, no fee shall be charged. R.S.O. 1960, c. 71, s. 43 (1, 3). Fee

**50.** A share certificate shall be signed manually by at least one officer of the corporation or by or on behalf of a transfer agent or branch transfer agent of the corporation, and the corporation may by by-law provide that any additional signatures required on share certificates may be printed, engraved, lithographed or otherwise mechanically reproduced thereon, and in such event share certificates so signed are as valid as if they had been signed manually. R.S.O. 1960, c. 71, s. 46. Signing of share certificates

**51.**—(1) Every share certificate shall state upon its face, Contents of share certificates

- (a) the name of the corporation and the words "Incorporated under the law of the Province of Ontario" or words of like effect;
- (b) the name of the person to whom the share is issued as holder; and
- (c) the number and class of shares represented thereby and whether the shares are with par value or without par value and, if with par value, the par value thereof. R.S.O. 1960, c. 71, s. 45 (1), *amended*.

Statements on share certificates (2) A share certificate issued for a share of a class of special shares shall,

- (a) legibly state on the certificate or have attached thereto a legible statement of the preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class of shares; or
- (b) legibly state on the certificate that there are preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class and that a copy of the full text thereof is obtainable on demand and without fee from the corporation.

Production of preferences, etc. (3) Where a share certificate contains a statement as provided in clause *b* of subsection 2, the corporation shall furnish to the shareholder on demand without fee a copy of the full text of the preferences, rights, conditions, restrictions, prohibitions and limitations attaching to the share.

Lien on shares (4) Where the articles or by-laws provide that a corporation has a lien on shares as authorized by subsection 2 of section 47, the right of the corporation to the lien shall be noted conspicuously on every share certificate issued by the corporation.

Transfer restricted (5) A share certificate for a share the transfer of which is restricted in accordance with the articles shall have the restriction noted conspicuously on the certificate. *New.*

Fractional shares **52.** Where, as a result of a change in the authorized capital of a corporation, a person becomes entitled to a fraction of a share, he is not entitled to be registered on the records of the corporation in respect thereof or to receive a share certificate therefor, but he is entitled to receive a bearer fractional certificate in respect of such fraction, and, on presentation at the head office of the corporation or at a place designated by the corporation of bearer fractional certificates for fractions that together represent a whole share, a share certificate for a whole share shall be issued in exchange therefor, and sections 63 to 97 apply thereto. R.S.O. 1960, c. 71, s. 37 (1, 2), *amended.*

#### BORROWING

Borrowing powers **53.—**(1) When authorized by special by-law, the directors may,

- (a) borrow money on the credit of the corporation; or
- (b) issue, sell or pledge debt obligations of the corporation; or

- (c) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal, movable or immovable property of the corporation, including book debts, rights, powers, franchises and undertaking, to secure any debt obligations or any money borrowed, or other debt or liability of the corporation. R.S.O. 1960, c. 71, s. 58 (1), *amended*.

(2) Any by-law referred to in subsection 1 may,

Contents  
of by-law

- (a) limit the amount to be borrowed as determined by the by-law; and
- (b) provide for the delegation by the directors of the powers conferred on them under the by-law to such directors or officers of the corporation and to such extent and manner as is set out in the by-law. *New*.

**54.** Nothing in this Act prohibits the issue of debt obligations in bearer form. *New*.

Bearer  
debt  
obligations

**55.** A condition contained in a debt obligation or in an instrument for securing a debt obligation is not invalid by reason only that the debt obligation is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long. R.S.O. 1960, c. 71, s. 59, *amended*.

Irredeem-  
able debt  
obligation

**56.**—(1) Where a corporation makes a charge, mortgage or other instrument of hypothecation or pledge to secure its debt obligations, the corporation shall, forthwith after the making thereof, file a duplicate original or certified copy of the instrument in the office of the Minister, but such filing may be made by any interested person. R.S.O. 1960, c. 71, s. 60 (1), *amended*.

Filing  
debt  
obligations

(2) Where the filing is by an interested person under subsection 1, that person is entitled to recover from the corporation the amount of any prescribed fee paid by him on such filing. *New*.

Recovery  
of fee

(3) Subsection 1 does not apply to a charge or mortgage filed with the Minister under *The Corporation Securities Registration Act*, or any other Act. R.S.O. 1960, c. 71, s. 60 (2).

Exception  
R.S.O. 1960,  
c. 70

### *Indenture Trustees*

**57.** In this section and in sections 58 to 62,

- (a) “trust indenture” means any deed, indenture or document howsoever designated, including any supplement or amendment thereto, by the terms of

Interpre-  
tation



which a body corporate issues or guarantees debt obligations and in which a trustee is named as trustee for the holders of the debt obligations issued or guaranteed thereunder;

- (b) "trustee" means any person named as trustee under the terms of a trust indenture, whether or not the person is a trust company authorized to carry on business in Ontario. *New.*

Contents  
of trust  
indentures

**58.** Trust indentures shall be deemed to contain the following provisions:

1. In the exercise of the rights, duties and obligations prescribed or conferred by the terms of the trust indenture, the trustee shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.
2. A person shall not be appointed a trustee under a trust indenture if a conflict of interest exists in the trustee's role as a fiduciary thereunder, and a trustee under a trust indenture shall resign from office in the event that a conflict of interest subsequently arises.
3. In the exercise of his rights, duties and obligations the trustee may, if he is acting in good faith, conclusively rely, as to the truth of the statements and the accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates complying with the requirements of the trust indenture and if,
  - (a) where the statutory declarations, opinions, reports or certificates are furnished under subsection 1 of section 59, they comply with subsections 2 and 3 thereof; and
  - (b) where the statutory declarations, opinions, reports or certificates are furnished under the trust indenture relating to any matter other than one referred to in subsection 1 of section 59, they comply with subsection 3 of section 59; and
  - (c) in either case, the trustee examines the evidence furnished to him under section 59 in order to determine whether such evidence indicates compliance with the applicable requirements of the trust indenture.

4. The trustee shall be required to give to the holders of debt obligations issued under the trust indenture, within thirty days after the occurrence thereof, notice of every event of default known to the trustee arising under the trust indenture and continuing at the time the notice is given, unless the trustee in good faith determines that the withholding of such notice is in the best interests of the holders of the debt obligations and so advises the corporation in writing. *New.*

**59.—**(1) The issuer or guarantor of debt obligations issued under the trust indenture shall furnish to the trustee evidence of compliance with every covenant or condition specified in the trust indenture relating to,

- (a) the certification and delivery of debt obligations under the trust indenture;
- (b) the release or release and substitution of property subject to any mortgage, charge, lien or other encumbrance created by the trust indenture;
- (c) the satisfaction and discharge of the trust indenture;
- (d) the issuing of additional debt obligations thereunder; and
- (e) any other action or step required or permitted to be taken by the issuer, guarantor or trustee under the trust indenture or as a result of any obligation imposed by the trust indenture.

(2) Evidence of compliance referred to in subsection 1 shall consist of,

- (a) statutory declarations made by officers of the issuer or guarantor authorized by the trust indenture stating that the covenant or condition has been complied with in accordance with the terms of the trust indenture;
- (b) an opinion of a solicitor that the covenant or condition has been complied with in accordance with the terms of the trust indenture; and
- (c) in the case of a covenant or condition compliance with which is subject to the review or examination by auditors or accountants, an opinion or report of the auditor of the issuer or guarantor or any accountant

R.S.O. 1960,  
c. 317

licensed under *The Public Accountancy Act*, in each case approved by the trustee, as to the accuracy or reliability of the statements required to be reviewed or examined and whether or not the statements have been made in accordance with the terms of the trust indenture.

Idem

(3) A statutory declaration, opinion or report required under subsection 2 shall include,

- (a) a statement by the person making or giving such statutory declaration, opinion or report that he has read and is familiar with the covenant or condition;
- (b) a brief statement of the nature and scope of the examination or investigation upon which the statements or opinions contained in the statutory declaration, opinion or report are based;
- (c) a statement that, in the belief of the person making or giving the statutory declaration, opinion or report, he has made such examination or investigation as is necessary to enable him to express an opinion whether the covenant or condition has been complied with; and
- (d) a statement whether in the opinion of such person the covenant or condition has been complied with.

Certificate  
of issuer or  
guarantor

(4) The issuer or guarantor of debt obligations under the trust indenture shall furnish the trustee annually, and at any other time if the trustee so requires, a certificate that the issuer or guarantor has complied with all covenants or conditions contained in the trust indenture that would, with the elapse of time or otherwise, constitute an event of default thereunder.

Additional  
provisions  
may be  
included

(5) Nothing in this section prevents the inclusion in a trust indenture of provisions requiring evidence of compliance with covenants or conditions in addition to those specified in this section. *New.*

Provisions  
which trust  
indentures  
must not  
contain

**60.** Except as provided in paragraphs 1 and 3 of section 58, a trust indenture to which section 58 applies shall not contain any provision relieving the trustee from liability arising thereunder. *New.*

Trustees  
under trust  
indentures  
not to be  
appointed  
receivers,  
etc.

**61.** A trustee under a trust indenture to which section 58 applies and any related person to such trustee shall not be appointed a receiver or receiver and manager or liquidator of the assets or undertaking of the issuer or guarantor of the debt obligations under the trust indenture. *New.*



**62.** Sections 58, 59 and 60 do not apply to,

Where  
sections  
58-60  
do not  
apply

- (a) any trust indenture entered into before the coming into force of those sections; and
- (b) any deed, indenture or document, supplemental to a trust indenture entered into before the coming into force of those sections, pursuant to which supplemental deed, indenture or document, additional secured debt obligations are issued or guaranteed, if such additional secured debt obligations rank on a parity with debt obligations theretofore issued under such trust indenture. *New.*

## INVESTMENT SECURITIES

### *General*

**63.—**(1) In this section and in sections 64 to 97,

Interpre-  
tation

- (a) “adverse claim” includes a claim that a transfer is or would be unauthorized or wrongful or that a particular adverse person is the owner of or has an interest in the security;
- (b) “appropriate person”, when used to refer to a person endorsing a security, means,
  - (i) the person specified by the security or by special endorsement to be entitled to the security,
  - (ii) where the person so specified is described as a trustee or other fiduciary but is no longer serving in that capacity and notwithstanding that a successor has been appointed or qualified,
    - a. where only one person is so described, that person or his successor, or
    - b. where more than one person is so described, the remaining persons,
  - (iii) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise, his executor, administrator, committee, guardian or like fiduciary,
  - (iv) where the security or endorsement specified more than one person as joint tenants or with

right of survivorship and by reason of death all cannot sign, the survivor or survivors,

(v) a person having the power to sign under the applicable law or controlling instrument, or

(vi) to the extent any of the foregoing persons may act through an agent, his authorized agent;

(c) "bearer form" when applied to a security means a security that runs to bearer according to its terms and not by reason of any endorsement;

(d) "broker" means a person engaged for all or part of his time in the business of buying and selling securities, who holds registration as a broker or in a similar capacity under *The Securities Act, 1966*, or who is recognized for the purpose of sections 64 to 97 by the Commission as a broker, and who in the transaction concerned acts for or buys a security from or sells a security to a customer;

(e) "clearing corporation" means a body corporate recognized as a clearing corporation by the Commission;

(f) "custodian" means a bank to which the *Bank Act* (Canada) applies, a trust company registered under *The Loan and Trust Corporations Act* or such other body corporate as may be recognized by the Commission as a custodian and which is acting as custodian for a clearing corporation;

(g) "proper form" means regular on its face with regard to all formal matters;

(h) "registered form" when applied to a security means a security that is not in bearer form and that specifies a person entitled to the security or the rights it evidences;

(i) "security" means a security as defined in section 1 and includes a warrant.

Application  
of ss. 64-97  
R.S.C. 1952,  
c. 15 (Can.)

(2) Sections 64 to 97 do not apply to a promissory note or bill of exchange to which the *Bills of Exchange Act* (Canada) applies. *New.*

Issuer's  
lien

**64.** A lien upon a security in favour of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security. *New.*

**65.—**(1) In this section, “overissue” means the issue of <sup>Overissue</sup> securities in excess of the amount which the issuer has corporate power to issue.

(2) The provisions of this Act that validate a security or <sup>Idem</sup> compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue, but,

- (a) if an identical security that does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, that he holds; or
- (b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand. *New.*

**66.** In any action on a security,

<sup>Evidence</sup>

- (a) unless specifically denied in the pleadings, each signature on the security or in a necessary endorsement is admitted;
- (b) where the effectiveness of a signature is put in issue, the burden of establishing its effectiveness is on the party claiming under the signature, but the signature is *prima facie* proof that it is genuine and authorized;
- (c) where signatures are admitted or established, production of the instrument entitled a holder to recover on it unless the defendant establishes a defence or a defect going to the validity of the security; and
- (d) after it is shown that a defence or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defence or defect is ineffective. *New.*

**67.—**(1) The validity of a security and the rights and <sup>Selection of laws</sup> duties with respect to registration of transfer of an issuer that is a corporation or a body corporate under the laws of Ontario are governed by this Act and the laws of Ontario.

(2) The validity of a security and the rights and duties <sup>Idem</sup> with respect to registration of transfer of an issuer that is a body corporate other than a corporation or a body corporate

under the laws of Ontario, are governed by the law, including the conflict of law rules, of the jurisdiction in which the body corporate was incorporated. *New.*

Form of  
transfer

**68.**—(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him in blank or to bearer.

Default in  
payment

(2) Where the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price,

(a) of any security accepted by the buyer; and

(b) if a security is not accepted by the buyer and its resale would be unduly burdensome or there is no readily available market. *New.*

*Rights and Liabilities of Issuer,  
Registrar and Transfer Agent*

Issuer

**69.**—(1) The obligations and defences of an issuer apply to a body corporate that,

(a) places or authorizes the placing of its name on a security, otherwise than as an authenticating trustee, registrar or transfer agent, to evidence that it represents a share, participation or other interest in its property or in an enterprise or to evidence its duty to perform an obligation evidenced by the security;

(b) directly or indirectly creates fractional interests in its rights or property which fractional interests are evidenced by securities; or

(c) becomes responsible for or in place of any other person described as an issuer in this section.

Guarantor

(2) The obligations and defences of an issuer apply to a guarantor of a security to the extent of his guaranty whether or not his obligation is noted on the security.

Person  
maintaining  
transfer  
books

(3) The person on whose behalf transfer books are maintained is an issuer for the purposes of the registration of a transfer under sections 92 to 95. *New.*

Notice of  
terms on  
security

**70.**—(1) A purchaser for value shall be deemed to have notice of the terms of a security including those stated on the security and those made part of the security by



reference to another instrument, indenture or document or to a statute, ordinance, rule, regulation, order or other written law to the extent that the terms so referred to do not conflict with the stated terms, except that he shall be deemed not to have such notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) Except as otherwise provided in the case of certain unauthorized signatures on issue, lack of genuineness of a security is a complete defence even against a purchaser for value and without notice. <sup>Defence of issuer</sup>

(3) All other defences of the issuer including non-delivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defence. <sup>Idem</sup>

(4) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement under which such security is to be issued or distributed. <sup>Idem</sup> *New.*

**71.**—(1) After an act or event that creates a right to immediate performance of the principal obligation evidenced by the security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or any defence of the issuer, <sup>Notice of defect</sup>

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not one to which clause *a* applies and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) Subsection 1 does not apply to a call for redemption that has been revoked. *New.* <sup>Revoked call for redemption excepted</sup>

**72.** Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it. *New.* <sup>Restriction on transfer</sup>

Unautho-  
rized  
signatures  
on issue

**73.** An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favour of a purchaser for value and without notice of the lack of authority if the signing has been done by,

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(b) an employee of the issuer,

entrusted with responsible handling of the security. *New.*

Completion  
of blanks

**74.**—(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect,

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

Improper  
alteration

(2) A complete security that has been improperly altered, even though fraudulently, remains enforceable but only according to its original terms. *New.*

Effect of  
registration

**75.**—(1) Subject to sections 106 and 112, the issuer or the indenture trustee may treat the registered holder as the person entitled to receive notice of and to vote at meetings of the security holders and to receive any payment in respect of the security and otherwise to exercise all the rights and powers of an owner. R.S.O. 1960, c. 71, s. 47 (2), *amended.*

Idem

(2) Nothing in sections 64 to 97 shall be construed to affect the liability of the registered owner of a security for calls, assessments or similar liabilities. *New.*

Warranties  
on issue

**76.**—(1) A body corporate placing its signature upon a security as authenticating trustee, registrar or transfer agent warrants to a purchaser for value without notice of the particular defect that,

(a) the security is genuine and in proper form;

(b) its own participation in the issue of the security is within its capacity and within the scope of the authorization received by it from the issuer; and

- (c) it has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his <sup>idem</sup> signature does not assume responsibility for the validity of the security in other respects. *New.*

### *Rights and Liabilities of Purchaser and Seller*

**77.**—(1) Upon delivery of a security, the purchaser acquires <sup>Rights acquired by purchaser</sup> the rights in the security that his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later purchaser for value in good faith who was without notice of any adverse claim.

(2) A purchaser for value in good faith and without notice <sup>bona fide purchaser</sup> of any adverse claim in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to <sup>Limited interest</sup> the extent of the interest purchased. *New.*

**78.**—(1) A purchaser, including a broker for the seller or <sup>Notice of adverse claims</sup> buyer, of a security is charged with notice of adverse claims if,

- (a) the security whether in bearer or registered form has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
- (b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on a security shall not be deemed such a statement.

(2) The fact that the purchaser, including a broker for the <sup>idem</sup> seller or the buyer, has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims, but if the purchaser has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

Idem

(3) An Act or event that creates a right to immediate performance of the principal obligation evidenced by the security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase,

- (a) after one year from any date set for such presentment or surrender for redemption or exchange; or
- (b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date. *New.*

Warranties  
on  
presentment

**79.**—(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange, but a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature in a necessary endorsement.

Warranties  
on transfer

(2) A person by transferring a security to a purchaser for value warrants only that,

- (a) his transfer is effective and rightful;
- (b) the security is genuine and has not been materially altered; and
- (c) he knows no fact that might impair the validity of the security.

Warranties  
of inter-  
mediary

(3) Where a security is delivered by an intermediary known by the transferee to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery, but a broker is not an intermediary within the meaning of this subsection.

Warranties  
of pledgee

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection 3.



(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section and the warranties of and in favour of the broker acting as an agent are in addition to applicable warranties given by and in favour of his customer. *New.* <sup>Warranties of broker</sup>

**80.** Where a security in registered form has been delivered to a purchaser without a necessary endorsement, he may become a purchaser for value in good faith and without notice of any adverse claim only as of the time the endorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied. *New.* <sup>Absence of endorsement</sup>

**81.—**(1) An endorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security. <sup>Endorsement</sup>

(2) An endorsement of a security may be, <sup>Idem</sup>

(a) in blank, including to bearer; or

(b) a special endorsement, specifying the person to whom the security is to be transferred or who has the power to transfer it,

and a holder may convert an endorsement in blank into a special endorsement.

(3) Unless otherwise agreed, the endorser by his endorsement assumes no obligation that the security will be honoured by the issuer. <sup>Obligations of endorser</sup>

(4) An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement. <sup>Partial endorsement</sup>

(5) Whether the person signing is appropriate shall be determined as of the date of signing and an endorsement by such person does not become unauthorized for the purposes of this Act by virtue of any subsequent change of circumstances. <sup>Appropriate person</sup>

(6) Failure of a fiduciary to comply with a controlling instrument or with the law applicable to the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his endorsement unauthorized for the purposes of this Act. *New.* <sup>Improper endorsement by fiduciary</sup>

Delivery  
necessary

**82.** An endorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears, or if the endorsement is on a separate document until the delivery of both the document and the security. *New.*

Effect of  
unautho-  
rized  
endorsement

**83.** Unless the owner has ratified an unauthorized endorsement or is otherwise precluded from asserting its ineffectiveness,

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered security on registration of transfer; and

(b) an issuer who registers the transfer of a security upon the unauthorized endorsement is subject to liability for improper registration. *New.*

Guarantee  
of signature

**84.—(1)** Any person guaranteeing a signature of an endorser of a security warrants that at the time of signing,

(a) the signature was genuine;

(b) the signer was an appropriate person to endorse; and

(c) the signer had legal capacity to sign,

but the guarantor does not otherwise warrant the rightfulness of the particular transfer.

Guarantee  
of  
endorsement

(2) Any person may guarantee an endorsement of a security and by so doing warrants not only the signature but also the rightfulness of the particular transfer in all respects.

Idem

(3) No issuer may require a guarantee of endorsement as a condition to registration of transfer.

Liability of  
guarantor

(4) The warranties referred to in subsections 1 and 2 are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties. *New.*

What  
constitutes  
delivery

**85.—(1)** Delivery to a purchaser occurs when,

(a) he or a person designated by him acquires possession of a security;

- (b) his broker acquires possession of a security specially endorsed or issued in the name of the purchaser;
- (c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser;
- (d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or
- (e) appropriate entries on the books of a clearing corporation are made under section 91.

(2) The purchaser is the owner of a security held for him <sup>Idem</sup> by his broker, but is not the holder except as specified in clauses *b*, *c* and *e* of subsection 1, but where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser, but as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.  
*New.*

**86.**—(1) Unless otherwise agreed where a sale of a security is made on a stock exchange recognized for the purposes of sections 64 to 97 by the Commission or otherwise through brokers, <sup>Duty of seller to deliver</sup>

- (a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or, if requested, causes an acknowledgment to be made to the selling broker that it is held for him; and
- (b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the recognized stock exchange on which the transaction took place.

- Idem (2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him.
- Idem (3) Subsection 2 applies to a sale to a broker purchasing on his own account unless the sale is made on a recognized stock exchange. *New.*
- Action for wrongful transfer **87.**—(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone else except a purchaser for value in good faith and without notice of any adverse claim reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.
- Idem (2) If the transfer is wrongful because of an unauthorized endorsement the owner may also reclaim or obtain possession of the security even from a purchaser for value in good faith and without notice of any adverse claim if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this Act relating to unauthorized endorsements.
- Specific performance and injunction (3) The right to obtain or reclaim possession of a security may be specially enforced by specific performance or its transfer enjoined. *New.*
- Transferor's duty to provide requisites for registration of transfer **88.**—(1) Unless otherwise agreed, the transferor shall on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite that may be necessary to obtain registration of the transfer of the security, but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses.
- Effect of failure (2) Failure to comply with a demand made under subsection 1 within a reasonable time gives the purchaser the right to reject or rescind the transfer. *New.*
- Transfer by agent in good faith not conversion **89.** An agent or bailee who in good faith, including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities, has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal has no right to dispose of them. *New.*



**90.** A contract for the sale of securities is not enforceable <sup>Contract for sale</sup> by way of action or defence unless,

- (a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;
- (b) delivery of the security has been accepted or payment has been made, but the contract is enforceable under this provision only to the extent of such delivery or payment;
- (c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under clause *a* has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within a reasonable time after its receipt; or
- (d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

**91.—(1)** If a security,

- (a) is in the custody of a clearing corporation or of a custodian or nominee of either, subject to the instructions of the clearing corporation; <sup>Transfer through clearing corporation</sup>
- (b) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian or a nominee of either; and
- (c) is shown on the account of a transferor or pledgor on the books of the clearing corporation,

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation, reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be in respect of like securities or interests therein as part of a fungible bulk and <sup>Interests in fungible bulk</sup> may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate

or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

Constructive endorsement and delivery

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank representing the amount of the obligation or the number of shares or rights transferred or pledged.

Idem

(4) If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party.

Holder

(5) A transferee or pledgee under this section is a holder.

Not registration

(6) A transfer or pledge under this section does not constitute a registration of transfer under sections 92 to 96.

Error in records

(7) That entries made on the books of the clearing corporation as provided in subsection 1 are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby. *New.*

### *Registration*

Duty of issuer to register transfer

**92.—**(1) Where a security in registered form is presented to the issuer with a request to register a transfer, the issuer is under a duty to register the transfer as requested if,

- (a) the security is endorsed by the appropriate person or persons;
- (b) reasonable assurance is given that those endorsements are genuine and effective;
- (c) the issuer has no notice of an adverse claim;
- (d) any applicable law relating to the collection of taxes has been complied with; and
- (e) the transfer is not contrary to applicable restrictions or is not of a share in respect of which the corporation is entitled to a lien and exercises its right to refuse registration.

Liability for undue delay

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer. *New.*

**93.**—(1) For the purpose of obtaining reasonable assurance <sup>Assurances required by issuer</sup> that each necessary endorsement required by section 81 is genuine and effective, the issuer may require a guarantee of the signature of the person endorsing or, where such guarantee is lacking,

- (a) where the endorsement is by an agent, appropriate assurance of authority to sign;
- (b) where the endorsement is by fiduciary, or a successor on whom title or control vests on the death of the holder, appropriate evidence of appointment or incumbency;
- (c) where there is more than one fiduciary or successor, reasonable assurance that all who are required to sign have done so; and
- (d) where the endorsement is by a person not covered by a person mentioned in this section, assurance appropriate to the case equivalent as nearly as may be to those required by this section.

(2) A “guarantee of the signature” in subsection 1 means <sup>Sufficiency of guarantee</sup> a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible, and the issuer may adopt standards with respect to responsibility if such standards are not manifestly unreasonable. *New.*

(3) For the purposes of subsection 1, “appropriate evidence of appointment or incumbency” means, <sup>Appropriate evidence of appointment or incumbency</sup>

- (a) if the fiduciary or successor claims by virtue of a grant of probate or letters of administration or other instrument issued or purporting to be issued by a court or other judicial authority in any jurisdiction, production of the same or an authenticated copy thereof or extract therefrom or a certificate of such grant under the seal of such court or other authority without any proof of the authenticity of such seal or other proof whatever and deposit of a copy thereof;
- (b) if the fiduciary or successor claims by virtue of the laws of any jurisdiction in which any transmission or vesting of title or control takes place without a grant of probate or letters of administration or other court or judicial action, production and deposit of proof thereof in accordance with the laws of such jurisdiction and reasonable evidence of such laws; or

- (c) if the net value of the estate of the deceased holder is less than \$1,500 or if the market value of the shares or securities is less than \$300, proof thereof to the reasonable satisfaction of the issuer,

together with, in any such event, production and deposit by the fiduciary or successor of a sworn statement showing the nature of the transmission or vesting of title or control, as the case may be. R.S.O. 1960, c. 71, s. 52, *amended*.

Other  
contents  
not notice

- (4) The issuer is not charged with notice of the contents of any document obtained for the purposes of subsection 3 except to the extent that the contents relate directly to the appointment or incumbency. *New*.

"claimant"  
defined

- 94.**—(1) In this section "claimant" means the person presenting a security for registration.

Notice to  
issuer of  
adverse  
claims

- (2) An issuer to whom a security is presented for registration has notice of an adverse claim if,

- (a) the issuer receives notice of the adverse claim evidenced by an order or judgment of a court of competent jurisdiction and the notice is received at a time and in a manner that affords the issuer a reasonable opportunity to act on it before the issuance of a new, reissued or reregistered security and the notification identifies the registered owner, the claimant and the issue of which the security is a part, and provides an address for communications directed to the claimant; or

- (b) the issuer is given written notice by the registered owner that the security is lost, destroyed or stolen.

Idem

- (3) An issuer shall not be deemed to have notice of an adverse claim otherwise than as provided in subsection 2.

Registration  
after  
notice

- (4) The issuer may register a transfer notwithstanding that it has notice of an adverse claim after thirty days after sending notice to both the registered owner and the claimant by registered mail to the address furnished by them for the purpose,

- (a) in compliance with the order or judgment of a court of competent jurisdiction; or
- (b) after obtaining an indemnity bond sufficient in the issuer's opinion to protect the issuer and any transfer agent, registrar or other agent of the issuer, from any loss that it or they may suffer by complying with the request for transfer. *New*.



**95.**—(1) The issuer is not liable to the owner or any other <sup>Liability of issuer</sup> person suffering loss as a result of the registration of a transfer of a security if,

- (a) there were on or with the security the necessary endorsements; and
- (b) the issuer had no notice of adverse claims.

(2) Where an issuer has registered a transfer of a security <sup>Idem</sup> to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless,

- (a) the registration was pursuant to subsection 1;
- (b) the owner is precluded from asserting any claim for registering the transfer under subsection 1 of section 96; or
- (c) such delivery would result in overissue, in which case the issuer's liability is governed by section 65.  
*New.*

**96.**—(1) Where a security has been lost, apparently de- <sup>Lost, etc., securities</sup>stroyed or wrongfully taken and the owner fails to notify the issuer of that fact in writing before the issuer registers a transfer of the security, the owner is precluded from asserting against the issuer any claim for registering the transfer under section 95 or any claim to a new security under this section.

(2) Where the owner of a security claims that the security <sup>Replacing lost, etc., securities</sup> has been lost, destroyed or wrongfully taken, the issuer shall issue a new security in place of the original security if the owner,

- (a) so requests before the issuer has notice that the security has been acquired by a purchaser for value without notice of an adverse claim;
- (b) files with the issuer an indemnity bond sufficient in the issuer's opinion to protect the issuer and any transfer agent, registrar or other agent of the issuer from any loss that it or they may suffer by complying with the request to issue a new security;
- (c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a purchaser for <sup>Rights of bona fide purchaser</sup> value without notice of an adverse claim of the original security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue in which event the issuer's liability is governed by section 65.

Rights of  
issuer

(4) In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a purchaser for value without notice of an adverse claim. *New.*

Duty of  
agents for  
issuer

**97.**—(1) A person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities is under a duty to exercise good faith and due diligence in performing his functions.

Notice to  
agents for  
issuer

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent. *New.*

## SHAREHOLDERS

### *Rights*

Dealings  
by corpora-  
tion with  
personal  
represent-  
atives

**98.**—(1) Where a person is shown on the records of a corporation as holding a share as a personal representative, the receipt by such person is a valid and binding discharge to the corporation for any payment made in respect of the share whether notice of any trust has been given to the corporation or not, and the corporation is not bound to see to the application of the money paid to him. R.S.O. 1960, c. 71, s. 47 (2, 3), *amended.*

Corporation  
not a  
shareholder  
of own  
shares

(2) Where shares are purchased by a corporation under subsection 1 of section 39 or subsection 2 of section 100 or accepted by a corporation under subsection 3 of section 38 or section 43 and are not thereby cancelled, no person is entitled to receive notice of or to vote at meetings of shareholders or to receive any payment in respect of the shares whether by way of dividend or otherwise until such shares are resold. *New.*

Represent-  
ative  
actions on  
behalf of  
corporation

**99.**—(1) Subject to subsection 2, a shareholder of a corporation may maintain an action in a representative capacity for himself and all other shareholders of the corporation suing for and on behalf of the corporation to enforce any right, duty or obligation owed to the corporation under this Act or under any other statute or rule of law or equity that could be enforced by the corporation itself, or to obtain damages for any breach of any such right, duty or obligation.

Leave

(2) An action under subsection 1 shall not be commenced until the shareholder has obtained an order of the court permitting the shareholder to commence the action.

(3) A shareholder may, upon at least seven days notice to the corporation, apply to the court for an order referred to in subsection 2, and, if the court is satisfied that,

Application  
for order  
to  
commence  
action

- (a) the shareholder was a shareholder of the corporation at the time of the transaction or other event giving rise to the cause of action;
- (b) the shareholder has made reasonable efforts to cause the corporation to commence or prosecute diligently the action on its own behalf; and
- (c) the shareholder is acting in good faith and it is *prima facie* in the interests of the corporation or its shareholders that the action be commenced,

the court may make the order upon such terms as the court thinks fit, except that the order shall not require the shareholder to give security for costs.

(4) At any time or from time to time while an action commenced under this section is pending, the plaintiff may apply to the court for an order for the payment to the plaintiff by the corporation of reasonable interim costs, including solicitor's and counsel fees and disbursements, for which interim costs the plaintiff shall be accountable to the corporation if the action is dismissed with costs on final disposition at the trial or on appeal.

Application  
for order  
for interim  
costs

(5) An action commenced under this section shall be tried by the court and its judgment or order in the cause, unless the action is dismissed with costs, may include a provision that the reasonable costs of the action are payable to the plaintiff by the corporation or other defendants taxed as between a solicitor and his own client.

Trial and  
judgment

(6) An action commenced under this section shall not be discontinued, settled or dismissed for want of prosecution without the approval of the court and, if the court determines that the interests of the shareholders or any class thereof may be substantially affected by such discontinuance, settlement or dismissal, the court, in its discretion, may direct that notice in manner, form and content satisfactory to the court shall be given, at the expense of the corporation or any other party to the action as the court directs, to the shareholders or class thereof whose interests the court determines will be so affected.

Discon-  
tinuance  
and  
settlement

*New.*

**100.**—(1) If, at a meeting of shareholders or of any class of shareholders of a corporation that is not offering its shares to the public,

Rights of  
dissenting  
shareholders

- (a) a resolution passed by the directors authorizing the sale, lease, exchange or other disposition of the undertaking of the corporation or any part thereof as an entirety or substantially as an entirety is confirmed with or without variation by the shareholders;
- (b) a resolution passed by the directors authorizing an amendment to the articles to delete therefrom a provision restricting the transfer of the shares of the corporation or of any class thereof is confirmed with or without variation by the shareholders; or
- (c) a resolution approving an agreement for the amalgamation of the corporation with one or more other corporations, is confirmed by the shareholders,

any shareholder who has voted against the confirmation of the resolution may within ten days after the date of the meeting give notice in writing to the corporation requiring it to purchase his shares.

Corporation  
bound to  
purchase  
shares

(2) Within ninety days from the date of the completion of the sale or disposition or the issue of the certificate of amendment or amalgamation, as the case may be, the corporation, or amalgamated corporation, as the case may be, shall purchase the shares of every shareholder who has given notice under subsection 1, and every such shareholder shall sell his shares to the corporation.

Saving

(3) The corporation shall not purchase any shares under subsection 2 if it is insolvent or if the purchase would render it insolvent.

Price of  
shares

(4) The price and terms of the purchase of such shares shall be as may be agreed upon by the corporation and the dissenting shareholder, but, if they fail to agree, the price and terms shall be as determined by the court on the application of the dissenting shareholder.

Sale of  
shares

(5) Any shares purchased under subsection 2 shall not be cancelled by reason only of such purchase and the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation.

Where  
sale not  
completed

(6) If the sale or disposition is not completed or the certificate of amendment or amalgamation is not issued, the rights of the dissenting shareholder under this section cease and the corporation shall not purchase the shares of such shareholder under this section. R.S.O. 1960, c. 71, s. 99, *amended*.



**101.**—(1) The persons holding equity shares carrying at least 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding may requisition the directors to call a meeting of the directors for the purpose of passing any by-law or resolution that may properly be passed at a meeting of the directors duly called, constituted and held for that purpose. <sup>Requisition for by-law or resolution</sup>

(2) The requisition shall set out the by-law or resolution, as the case may be, that is required to be passed at the meeting and shall be signed by the requisitionists and deposited at the head office of the corporation, and may consist of several documents in like form, each signed by one or more requisitionists. <sup>Form of requisition</sup>

(3) Upon deposit of the requisition, the directors shall forthwith call a meeting of the directors for the purpose of passing the by-law or resolution, as the case may be, set out in the requisition. <sup>Meeting of directors</sup>

(4) Where the directors do not within twenty-one days from the date of the deposit of the requisition call and hold such a meeting and pass such a by-law or resolution and, where the by-law or resolution requires confirmation at a general meeting of the shareholders, call a general meeting of the shareholders for the purpose of confirming the by-law or resolution, any of the requisitionists may call a general meeting of the shareholders for the purpose of passing such by-law or resolution, and the meeting shall be held within sixty days from the date of the deposit of the requisition. <sup>Meeting of shareholders</sup>

(5) A meeting of the shareholders called under subsection 4 shall be called as nearly as possible in the same manner as meetings of shareholders are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting. <sup>Notice</sup>

(6) Where a by-law or resolution is passed at a meeting of the shareholders called under subsection 4, either as set out in the requisition or as varied at the meeting, it is as valid and effective as if it had been passed at a meeting of the directors duly called, constituted and held for that purpose and confirmed at a meeting of the shareholders duly called, constituted and held for that purpose, and, if the resolution or by-law is passed by at least two-thirds of the votes cast at the meeting of the shareholders called under subsection 4, it shall be conclusively deemed to be a special resolution or special by-law, as the case may be, for the purposes of this Act. <sup>Validity of by-law or resolution</sup>

Repayment  
of expenses

(7) The corporation shall,

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the failure of the directors to act in accordance with subsections 3 and 4; and
- (b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting called under subsection 4, the shareholders, by a majority of the votes cast, reject the reimbursement of the requisitionists.

New  
requisition  
on same  
subject

(8) Where a by-law or resolution in respect of which a meeting is required by requisition under this section is not passed at the meeting, no requisition for a meeting in respect of a similar by-law or resolution shall be made for a period of at least two years. *New.*

Circulation  
of share-  
holders'  
resolutions,  
etc.

**102.**—(1) On the requisition in writing of the persons holding equity shares carrying at least 5 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, the directors shall,

- (a) give to the shareholders entitled to notice of the next meeting of shareholders notice of any resolution that may properly be moved and is intended to be moved at that meeting; or
- (b) circulate to the shareholders entitled to vote at the next meeting of shareholders a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or with respect to the business to be dealt with at that meeting.

Notice

(2) The notice or statement or both, as the case may be, shall be given or circulated by sending a copy thereof to each shareholder entitled thereto in the same manner and at the same time as that prescribed by this Act, the articles or the by-laws, for the sending of notice of meetings of shareholders.

Idem

(3) Where it is not practicable to send the notice or statement or both at the same time as the notice of the meeting is sent, the notice or statement or both shall be sent as soon as practicable thereafter.

(4) The directors are not bound under this section to give notice of any resolution or to circulate any statement unless, Deposit of requisition, etc.

(a) the requisition, signed by the requisitionists, is deposited at the head office of the corporation,

(i) in the case of a requisition requiring notice of a resolution to be given, not less than twenty-one days before the meeting where the corporation is offering its securities to the public and not less than ten days before the meeting where the corporation is not offering its securities to the public,

(ii) in the case of a requisition requiring a statement to be circulated, not less than fourteen days before the meeting where the corporation is offering its shares to the public and not less than seven days before the meeting where the corporation is not offering its shares to the public; and

(b) there is deposited with the requisition a sum reasonably sufficient to meet the expenses of the corporation in giving effect thereto.

(5) The directors are not bound under this section to circulate any statement if, on the application of the corporation or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and on any such application the court may order the costs of the corporation to be paid in whole or in part by the requisitionists notwithstanding that they are not parties to the application. Where directors not bound to circulate statement

(6) No corporation or a director, officer or employee thereof or person acting on its behalf, except a requisitionist, is liable in damages or otherwise by reason only of the giving of a notice or the circulation of a statement, or both, in compliance with this section. Where no liability

(7) Notwithstanding anything in the by-laws of the corporation, where the requisitionists have complied with this section, the resolution, if any, mentioned in the requisition shall be dealt with at the meeting to which the requisition relates. Duty to deal with requisitioned matter

Repayment  
of expenses

(8) The corporation shall pay to the requisitionists the sum deposited under clause *b* of subsection 4 unless at the meeting to which the requisition relates the shareholders by a majority of the votes cast reject the repayment to the requisitionists. R.S.O. 1960, c. 71, s. 309 (1-8), *amended*.

### *Liabilities*

Liability  
on decrease  
of issued  
capital

**103.**—(1) Where the issued capital of a corporation is decreased by an amendment to the articles, each person who was a shareholder on the effective date of the amendment is individually liable to the creditors of the corporation for the debts due on that date to an amount not exceeding the amount of the repayment to him.

Limitation  
of liability

(2) A person is not liable under subsection 1 unless,

- (a) the corporation has been sued for the debt within six months after the effective date of the amendment and execution has been returned unsatisfied in whole or in part; and
- (b) he is sued for the debt in a court of competent jurisdiction within two years from the effective date of the amendment.

*Idem*

(3) After execution has been so returned, the amount due on the execution, not exceeding the amount of the repayment to the person, is the amount recoverable against such person.

Class  
actions

(4) Where it is made to appear that there are numerous shareholders who may be liable under this section, the court of competent jurisdiction may permit an action to be brought against one or more of them as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such shareholders as may be found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined.

Shareholder  
holding  
shares in  
fiduciary  
capacity

(5) No person holding shares in the capacity of a personal representative and registered on the records of the corporation as a shareholder and therein described as representing in such capacity a named estate, person or trust is personally liable under this section, but the estate, person or trust is subject to all liabilities imposed by this section. R.S.O. 1960, c. 71, s. 36, *amended*.

Share-  
holder's  
liability  
limited

**104.** A shareholder of a corporation as such is not answerable or responsible for any act, default, obligation or liability



of the corporation, or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the corporation. R.S.O. 1960, c. 71, s. 55 (1), *amended*.

### *Meetings*

**105.**—(1) Subject to subsections 2 and 3, the meetings of the shareholders shall be held at the place where the head office of the corporation is located. <sup>Place of meetings</sup>

(2) Where the by-laws of the corporation so provide, the meetings of the shareholders may be held at any place within Ontario. <sup>Exception</sup>

(3) Where the articles of the corporation so provide, the meetings of the shareholders may be held at one or more places outside Ontario specified therein. R.S.O. 1960, c. 71, s. 74 (1-3), *amended*. <sup>Idem</sup>

**106.**—(1) Subject to subsection 2 and in the absence of other provisions in that behalf in the articles or by-laws of the corporation, <sup>Shareholders, meetings</sup>

(a) notice of the time and place for holding a meeting of the shareholders shall be given to each person who is entitled to notice of meetings and who on the record date, appears on the records of the corporation as a shareholder by sending the notice by prepaid mail to his latest address as shown on the records of the corporation,

(i) in the case of a corporation that is offering its securities to the public, twenty-one days or more before the date of the meeting, and

(ii) in the case of a corporation that is not offering its securities to the public, ten days or more before the date of the meeting,

but in no case more than fifty days before the date of the meeting;

(b) all questions proposed for the consideration of the shareholders at a meeting of shareholders shall be determined by the majority of the votes cast, and the chairman presiding at the meeting has a second or casting vote in case of an equality of votes;

(c) the chairman presiding at a meeting of shareholders may, with the consent of the meeting and subject to such conditions as the meeting decides, adjourn the meeting from time to time and from place to place;

(d) the president or, in his absence, a vice-president who is a director shall preside as chairman at a meeting of shareholders, but, if there is no president or such a vice-president or if at a meeting neither of them is present within fifteen minutes after the time appointed for the holding of the meeting, the shareholders present shall choose a person from their number to be the chairman;

(e) unless a poll is demanded, an entry in the minutes of a meeting of shareholders to the effect that the chairman declared a motion to be carried is admissible in evidence as *prima facie* proof of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

Notice

(2) The articles or by-laws of the corporation shall not provide for fewer than,

(a) twenty-one days notice in the case of a corporation that is offering its securities to the public, or

(b) ten days notice in the case of a corporation that is not offering its securities to the public,

for meetings of shareholders but in no case shall notice be given more than fifty days before the date of the meeting and the articles or by-laws shall not provide that notice may be given otherwise than individually.

Poll

(3) If a poll is demanded, it shall be taken in such manner as the by-laws prescribe, and, if the by-laws make no provision therefor, then as the chairman directs. R.S.O. 1960, c. 71, s. 79, *amended*.

Annual meetings

**107.** A corporation shall hold an annual meeting of its shareholders not later than eighteen months after its incorporation and subsequently not more than fifteen months after the holding of the last preceding annual meeting. R.S.O. 1960, c. 71, s. 306.

General meetings

**108.** The directors may at any time call a general meeting of the shareholders for the transaction of any business, the general nature of which is specified in the notice calling the meeting. R.S.O. 1960, c. 71, s. 307.

Requisition for shareholders' meeting

**109.—**(1) The persons holding equity shares carrying at least 5 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding may

requisition the directors to call a general meeting of the shareholders for any purpose that is connected with the affairs of the corporation and that is not inconsistent with this Act.

(2) The requisition shall state the general nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the head office of the corporation and may consist of several documents in like form, each signed by one or more requisitionists. <sup>Requisition</sup>

(3) Upon deposit of the requisition, the directors shall forthwith call a general meeting of the shareholders for the transaction of the business stated in the requisition. <sup>Duty of directors to call meeting</sup>

(4) If the directors do not within thirty days from the date of the deposit of the requisition call and hold the meeting, any of the requisitionists may call the meeting, which shall be held within sixty days from the date of the deposit of the requisition. <sup>Where requisitionists may call meeting</sup>

(5) A meeting called under this section shall be called as nearly as possible in the same manner as meetings of shareholders are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting. <sup>Calling of meeting</sup>

(6) The corporation shall, <sup>Repayment of expenses</sup>

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the action taken by them under subsection 4; and
- (b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting, the shareholders by a majority of the votes cast reject the reimbursement of the requisitionists. R.S.O. 1960, c. 71, s. 308, *amended*.

**110.** Notwithstanding section 109, upon application by a shareholder of a corporation, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the corporation or its shareholders that the meeting be held on requisition, may make an order, upon such terms as to security for the costs of holding the meeting or otherwise as to the court seem fit, requiring the directors <sup>Idem, on court order</sup>

to call a general meeting of the shareholders for any purpose that is connected with the affairs of the corporation and that is not inconsistent with this Act. *New.*

Court may  
direct  
method of  
holding  
meetings

**111.** If for any reason it is impracticable to call a meeting of shareholders of a corporation in any manner in which meetings of shareholders may be called or to conduct the meeting in the manner prescribed by this Act, the articles or by-laws, the court may, on the application of a director or a shareholder who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the court thinks fit, and any meeting called, held and conducted in accordance with the order shall for all purposes be deemed to be a meeting of shareholders of the corporation duly called, held and conducted. R.S.O. 1960, c. 71, s. 310, *amended.*

Record  
date

**112.**—(1) The by-laws may provide for the fixing in advance of a date as the record date for the determination of the shareholders entitled to notice of meetings of the shareholders or to vote at such meetings or any adjournment thereof, but such record date shall not be more than fifty days before the date of the meeting and not fewer than the minimum number of days for notice of the meeting.

Idem

(2) Where no record date is fixed by by-law, the record date shall be at the close of business on the day next preceding the day on which notice is given or sent. *New.*

Voting  
rights

(3) The holder of each common share and, unless the articles condition, restrict, limit or prohibit the right to vote, the holder of each special share who, on the record date, appears on the records of the corporation as a shareholder is entitled to one vote for each share held by him at all meetings of the shareholders of the corporation, or such greater number of votes for each share respecting such matters as the articles provide. R.S.O. 1960, c. 71, s. 29, *amended.*

Personal  
representative

**113.**—(1) Where a person holds shares as a personal representative, that person or his proxy is the person entitled to vote at all meetings of shareholders in respect of the shares so held by him.

Mortgages,  
etc.

(2) Where a person mortgages or hypothecates his shares, that person or his proxy is the person entitled to vote at all meetings of shareholders in respect of such shares unless, in the instrument creating the mortgage or hypothec, he has expressly empowered the person holding the mortgage or hypothec to vote in respect of such shares, in which case, subject to the articles, such holder or his proxy is the person entitled to vote in respect of the shares. R.S.O. 1960, c. 71, s. 77, *amended.*



**114.** Where two or more persons hold the same share or shares jointly, any one of such persons present at a meeting of shareholders has the right in the absence of the other or others to vote in respect of such share or shares, but, if more than one of such persons are present or represented by proxy and vote, they shall vote together as one on the share or shares jointly held by them. R.S.O. 1960, c. 71, s. 78, *amended*. Joint  
shareholders

**115.** In this section and in sections 116 to 121,

Interpre-  
tation

- (a) "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy;
- (b) "information circular" means the circular referred to in subsection 1 of section 118;
- (c) "proxy" means a completed and executed form of proxy by means of which a shareholder has appointed a person as his nominee to attend and act for him and on his behalf at a meeting of shareholders;
- (d) "solicit" and "solicitation" include,
  - (i) any request for a proxy whether or not accompanied by or included in a form of proxy,
  - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
  - (iii) the sending or delivery of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
  - (iv) the sending or delivery of a form of proxy to a shareholder under section 117,

but do not include,

- (v) the sending or delivery of a form of proxy to a shareholder in response to an unsolicited request made by him or on his behalf, or
- (vi) the performance by any person of ministerial acts or professional services on behalf of a person soliciting a proxy. 1966, c. 28, s. 4, *part*.

**116.—(1)** Every shareholder, including a shareholder that is a body corporate, entitled to vote at a meeting of shareholders may by means of a proxy appoint a person, who need not be a shareholder, as his nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy. Proxies

Execution  
and  
termination

(2) A proxy shall be executed by the shareholder or his attorney authorized in writing or, if the shareholder is a body corporate, under its corporate seal or by an officer or attorney thereof duly authorized, and ceases to be valid one year from its date.

Contents

(3) In addition to the requirements, where applicable, of section 120, a proxy shall contain the date thereof and the appointment and name of the nominee and may contain a revocation of a former proxy and restrictions, limitations or instructions as to the manner in which the shares in respect of which the proxy is given are to be voted or that may be necessary to comply with the laws of any jurisdiction in which the shares of the corporation are listed on a stock exchange or a restriction or limitation as to the number of shares in respect of which the proxy is given.

Revocation

(4) In addition to revocation in any other manner permitted by law, a proxy may be revoked by an instrument in writing executed by the shareholder or by his attorney authorized in writing or, if the shareholder is a body corporate, under its corporate seal or by an officer or attorney thereof duly authorized, and deposited either at the head office of the corporation at any time up to and including the last business day preceding the day of the meeting, or any adjournment thereof, at which the proxy is to be used or with the chairman of such meeting on the day of the meeting, or adjournment thereof, and upon either of such deposits the proxy is revoked.

Time limit  
for deposit

(5) The directors may by resolution fix a time not exceeding forty-eight hours, excluding Saturdays and holidays, preceding any meeting or adjourned meeting of shareholders before which time proxies to be used at that meeting must be deposited with the corporation or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting or in the information circular relating thereto. 1966, c. 28, s. 4, *part*.

Mandatory  
solicitation  
of proxies

**117.** Subject to section 119, the management of a corporation shall, concurrently with or prior to giving notice of a meeting of shareholders of the corporation, send by prepaid mail to each shareholder who is entitled to vote at such meeting at his latest address as shown on the records of the corporation a form of proxy that complies with section 120 for use at the meeting. 1966, c. 28, s. 4, *part, amended*.

Information  
circular

**118.—**(1) Subject to subsection 2 and section 119, no person shall solicit proxies unless,

(a) in the case of a solicitation by or on behalf of the management of a corporation, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each shareholder of the corporation whose proxy is solicited at his latest address as shown on the records of the corporation; or

(b) in the case of any other solicitation, the person making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each shareholder of the corporation whose proxy is solicited.

(2) Subsection 1 does not apply to,

Where  
ss. 117,  
118 (1)  
apply

(a) any solicitation, otherwise than by or on behalf of the management of a corporation, where the total number of shareholders whose proxies are solicited is not more than fifteen;

(b) any solicitation by a person made pursuant to section 79 of *The Securities Act, 1966*; and

1966, c. 142

(c) any solicitation by a person in respect of shares of which he is the beneficial owner.

(3) Section 256 applies to a solicitation that is subject to this section by means of a form of proxy, information circular or other communication. 1966, c. 28, s. 4, *part, amended*.

Untrue  
solicitations  
an offence

**119.**—(1) Section 117 and subsection 1 of section 118 apply only to a corporation that is offering its securities to the public.

Where  
ss. 117,  
118 (1)  
apply

(2) Upon the application of any interested person, the Commission may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order, on such terms and conditions as seem to it just and expedient, exempting, in whole or in part, any person from the requirements of section 117 or from the requirements of subsection 1 of section 118. 1966, c. 28, s. 4, *part, amended*.

Exemption  
orders

**120.** Where section 117 or 118 applies to a solicitation of proxies,

Special  
form of  
proxy

(a) the form of proxy sent to a shareholder by a person soliciting proxies,

- (i) shall indicate in bold-face type or other conspicuous manner whether or not the proxy is solicited by or on behalf of the management of the corporation, and
  - (ii) shall provide a specifically designated blank space for dating the form of proxy;
- (b) the form of proxy shall provide means whereby the person whose proxy is solicited is afforded an opportunity to specify that the shares registered in his name shall be voted by the nominee in favour of or against, in accordance with such person's choice, each matter or group of related matters identified therein or in the information circular as intended to be acted upon, other than the election of directors and the appointment of auditors, but a proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by such means if the form of proxy or the information circular states in bold-face type or other conspicuous manner how it is intended to vote the shares represented by the proxy in each such case;
- (c) a proxy may confer discretionary authority with respect to,
  - (i) amendments or variations to matters identified in the notice of meeting, or
  - (ii) other matters that may properly come before the meeting,
 but only if,
  - (iii) the person by whom or on whose behalf the solicitation is made is not aware a reasonable time prior to the time the solicitation is made that any such amendments, variations or other matters are to be presented for action at the meeting, and
  - (iv) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority;
- (d) no proxy shall confer authority,
  - (i) to vote for the election of any person as a director of the corporation unless a *bona fide* proposed nominee for such election is named in the information circular, or



- (ii) to vote at any meeting other than the meeting specified in the notice of meeting or any adjournment thereof;
- (e) the information circular or form of proxy shall state that the shares represented by the proxy will be voted and that, where the person whose proxy is solicited specifies a choice with respect to any matter to be acted upon under clause *b*, the shares shall, subject to section 121, be voted in accordance with the specifications so made;
- (f) the information circular or form of proxy shall indicate in bold-face type or other conspicuous manner that the shareholder has the right to appoint a person to attend and act for him and on his behalf at the meeting other than the person, if any, designated in the form of proxy, and shall contain instructions as to the manner in which the shareholder may exercise such right; and
- (g) if the form of proxy contains a designation of a named person as nominee, means shall be provided whereby the shareholder may designate in a form of proxy some other person as his nominee for the purpose of subsection 1 of section 116. 1966, c. 28, s. 4, *part, amended*.

**121.** If the aggregate number of shares represented at a meeting by proxies required to be voted for or against a particular matter or group of matters carries, to the knowledge of the chairman of the meeting, less than 5 per cent of the voting rights attached to the shares entitled to vote and represented at the meeting, the chairman of the meeting has the right not to conduct a vote by way of ballot on any such matter or group of matters unless a poll is demanded at the meeting. 1966, c. 28, s. 4, *part*.

Where  
vote by  
ballot not  
required

## DIRECTORS AND OFFICERS

### *Directors*

**122.**—(1) Every corporation shall have a board of directors howsoever designated.

Board of  
directors

(2) The board of directors shall consist of a fixed number of directors,

Com-  
position

- (a) in the case of a corporation that is not offering its securities to the public, of at least one; and

- (b) in the case of a corporation that is offering its securities to the public, of not fewer than three, of whom at least two shall not be officers or employees of the corporation or of any affiliate of the corporation. R.S.O. 1960, c. 71, s. 296 (1, 2), *amended*.

First  
directors

**123.**—(1) Each of the persons named as first directors in the articles of a corporation is a director of the corporation until replaced by a person duly elected or appointed in his stead.

Idem

(2) The first directors of a corporation have all the powers and duties and are subject to all the liabilities of directors. R.S.O. 1960, c. 71, s. 297 (1, 2), *amended*.

Change in  
number of  
directors

**124.**—(1) A corporation may by special by-law increase or, subject to subsection 2 of section 122, decrease the number of its directors as set out in its articles.

Filing of  
by-law

(2) The corporation shall file with the Minister a certified copy of the by-law within ten days after the by-law has been confirmed by the shareholders.

Validity

(3) Failure to comply with subsection 2 does not affect the validity of the by-law. R.S.O. 1960, c. 71, s. 298, *amended*.

Age of  
directors

**125.**—(1) No person under twenty-one years of age shall be a director of a corporation.

Qualifica-  
tions

(2) No undischarged bankrupt or mentally incompetent person shall be a director, and, if a director becomes a bankrupt or a mentally incompetent person, he thereupon ceases to be a director. R.S.O. 1960, c. 71, s. 299 (4, 5), *amended*.

Consent

(3) A person who is elected or appointed a director is not a director unless,

- (a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as director;
- (b) where he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.

Idem

(4) For the purposes of subsection 3, a person who is elected or appointed as director and refuses under clause *a* of subsection 3 or fails to consent under clause *b* of subsection 3 shall be deemed not to have been elected or appointed as a director. *New*.

**126.**—(1) The directors shall be elected by the share-<sup>Election of directors</sup>holders in general meeting, and the election shall be by ballot or in such other manner as the by-laws of the corporation prescribe.

(2) The election of directors shall take place yearly, or at such other interval not exceeding five years as is provided by the articles and all the directors then in office shall retire, but, if qualified, are eligible for re-election. R.S.O. 1960, c. 71, s. 300 (1, 2), *amended*. <sup>Idem</sup>

(3) If an election of directors is not held within the pre-<sup>Continu-</sup>scribed period, the directors continue in office until their <sup>ance in</sup>successors are elected. <sup>office</sup>

(4) The articles may provide for the election and retire-<sup>Rotation</sup>ment of directors in rotation, but in that case no director <sup>of directors</sup>shall be elected for a term of more than five years and at least three directors shall retire from office in each year. R.S.O. 1960, c. 71, s. 300 (3, 4), *amended*.

**127.** The articles or a special by-law of a corporation <sup>Cumulative</sup>may provide that, <sup>voting for</sup>  
<sup>directors</sup>

(a) every shareholder entitled to vote at an election of directors has the right to cast thereat a number of votes equal to the number of votes attached to the shares held by him multiplied by the number of directors to be elected, and he may cast all such votes in favour of one candidate or distribute them among the candidates in such manner as he sees fit; and

(b) where he has voted for more than one candidate without specifying the distribution of his votes among such candidates, he shall be deemed to have divided his votes equally among the candidates for whom he voted. R.S.O. 1960, c. 71, s. 64 (1), *amended*.

**128.**—(1) Subject to subsection 2, where there is a quorum <sup>Vacancies</sup>of directors in office and a vacancy occurs in the board, the directors remaining in office may appoint a qualified person to fill the vacancy for the remainder of the term. R.S.O. 1960, c. 71, s. 301 (1, 2), *amended*.

(2) Where part of the board of directors has been elected <sup>Idem, where</sup>by the holders of the shares of a special class of shares as <sup>elected by</sup>provided in clause *d* of subsection 1 of section 27, and a <sup>class of</sup>vacancy occurs in that part of the board, the remaining <sup>shareholders</sup>directors or director, if any, in that part of the board may

appoint a qualified person to fill the vacancy for the remainder of the term, and, if there is no such remaining director, the holders of that class of shares at a general meeting thereof that may be called by any holder of shares of that class may elect a qualified person to fill the vacancy for the remainder of the term. *New.*

Idem,  
where no  
quorum

(3) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a general meeting of the shareholders to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any shareholder. R.S.O. 1960, c. 71, s. 301 (3).

Quorum of  
directors

**129.** Unless the articles or by-laws otherwise provide, a majority of the board of directors constitutes a quorum, but in no case shall a quorum be less than two-fifths of the board of directors or two directors, whichever is the greater. R.S.O. 1960, c. 71, s. 301 (1), *amended.*

Place of  
meetings

**130.**—(1) Subject to subsection 2, the meetings of the board of directors and the executive committee shall be held at the place where the head office of the corporation is located.

Exception

(2) Where the by-laws of the corporation so provide, the meetings of the board of directors and of the executive committee may be held at any place within or outside Ontario. R.S.O. 1960, c. 71, s. 74 (1, 2), *amended.*

Calling  
meetings  
of directors

**131.**—(1) In addition to any other provision in the articles or by-laws of a corporation for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting.

Notice

(2) In the absence of any other provision in that behalf in the by-laws of the corporation, notice of the time and place for the holding of the meeting called under subsection 1 shall be given to every director of the corporation by sending the notice by prepaid mail ten days or more before the date of the meeting to his latest address as shown on the records of the corporation. *New.*

Duties

**132.**—(1) The board of directors shall manage or supervise the management of the affairs and business of the corporation and may make or cause to be made for the corporation any contract that the corporation may make.

Conduct of  
business

(2) Subject to section 133 and subsection 1 of section 23, no business of a corporation shall be transacted by its directors except at a meeting of directors at which a quorum of the board is present.



(3) Where there is a vacancy or vacancies in the board of <sup>Idem</sup> directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office. R.S.O. 1960, c. 71, s. 296, *amended*.

**133.**—(1) Where the number of directors of a corporation <sup>Executive committee</sup> is more than six, and if authorized by a special by-law, the directors may elect from among their number an executive committee consisting of not fewer than three and may delegate to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors.

(2) An executive committee may fix its quorum, which shall <sup>Quorum</sup> be not less than a majority of its members. R.S.O. 1960, c. 71, s. 69 (1, 2), *amended*.

**134.**—(1) Every director of a corporation who has, directly or indirectly, any interest in any contract or transaction to which the corporation is or is to be a party, other than a contract or transaction limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the corporation and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase and sale of assets by or to the corporation or a subsidiary thereof, the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such information is within his knowledge or control. <sup>Disclosure by directors of interests in contracts</sup>

(2) Subsection 1 does not require the disclosure of any <sup>Interest to be material</sup> interest in any contract or transaction unless the interest and the contract or transaction are both material.

(3) The declaration required by this section shall be made <sup>When declaration of interest to be made</sup> at the meeting of the directors at which the contract or transaction is first considered or, if the director is not at the date of the meeting interested in the contract or transaction, at the next meeting of the directors held after he becomes so interested, and, where the director becomes interested in a contract or transaction after it is entered into, the declaration shall be made at the first meeting of the directors held after he becomes so interested.

(4) If a director has made a declaration and disclosure of <sup>Effect of declaration</sup> his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the corporation, the

director, if he is acting honestly and in good faith, is not by reason only of his holding the office of director accountable to the corporation or to its shareholders for any profit or gain realized from the contract or transaction, and the contract or transaction, if it is in the best interests of the corporation, is not voidable by reason only of the director's interest therein.

Confirmation  
by  
shareholders

(5) Notwithstanding anything in this section, a director, if he is acting honestly and in good faith, is not accountable to the corporation or to its shareholders for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction, if it is in the best interests of the corporation, is not by reason only of the director's interest therein voidable,

- (a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for that purpose; and
- (b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting or in the information circular required by section 118. R.S.O. 1960, c. 71, s. 70, *amended*.

Liability  
of directors  
re purchase  
of shares

**135.**—(1) Where any shares of a corporation are acquired by it by redemption, purchase or acceptance for surrender in contravention of this Act or the articles, the directors who voted in favour of or consented to the resolution authorizing the redemption, purchase or acceptance for surrender are jointly and severally liable to the corporation to the extent of the amount paid for the acquisition of the shares.

Application  
to court

(2) Where any shares of a corporation are acquired by it by redemption, purchase or surrender in contravention of this Act or the articles,

- (a) any shareholder of the corporation; or
- (b) where the acquisition is in contravention of subsection 1 of section 38, subsection 3 of section 39 or section 100, any creditor of the corporation who was a creditor at the time of the acquisition,

may apply to the court within two years of the acquisition, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any shareholder whose shares were acquired liable to the corporation, jointly and severally with the directors, to the extent of the amount paid to him for his shares. *New.*

**136.** Where any dividend is declared and paid in contra-<sup>Liability of directors re dividends</sup>vention of section 153 or 154,

- (a) the directors who voted in favour of or consented to the resolution authorizing the declaration of the dividend are jointly and severally liable to the corporation to the extent of the amount of the dividend so declared and paid or such part thereof as renders the corporation insolvent or diminishes its capital; and
- (b) any shareholder of the corporation or any creditor of the corporation who was a creditor at the time of the declaration of the dividend may apply to the court within two years of the declaration, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any shareholder to whom the dividend is paid jointly and severally liable with the directors to the extent of the amount of the dividend paid to him. R.S.O. 1960, c. 71, s. 61 (3), *part, amended*.

**137.**—(1) A director who was present at a meeting of the<sup>Consent of director at meeting</sup> board of directors or an executive committee thereof when,

- (a) the redemption, purchase or acceptance for surrender of shares of the corporation is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) a loan or guarantee mentioned in section 146 is authorized,

shall be deemed to have consented thereto unless,

- (d) his dissent is entered in the minutes of the meeting;
- (e) he files his written dissent with the person acting as secretary of the meeting before its adjournment; or
- (f) he delivers or sends his dissent by registered mail to the corporation immediately after the adjournment of the meeting,

and within seven days after complying with clause *d*, *e* or *f* he sends a copy of his dissent by registered mail to the Minister.

(2) A director who voted in favour of a matter referred to<sup>Idem</sup> in subsection 1 is not entitled to dissent under subsection 1.

Consent of  
director  
not at  
meeting

(3) A director who was not present at a meeting of the board of directors or any executive committee thereof when,

- (a) the redemption, purchase or acceptance for surrender of shares of the corporation is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) a loan or guarantee mentioned in section 146 is authorized,

shall be deemed to have consented thereto unless,

- (d) he delivers or sends to the corporation by registered mail his dissent; or
- (e) he causes his dissent to be filed with the minutes of the meeting,

within seven days after he becomes aware of the authorization referred to in clause *a*, *b* or *c* and unless, within seven days after complying with clause *d* or *e*, he sends a copy of his dissent by registered mail to the Minister. *New.*

Exception  
to liability

**138.**—(1) A director is not liable under section 135, 136 or 146 if, in the circumstances, he discharged his duty to the corporation in accordance with section 144.

Liability  
not  
excluded

(2) The liability imposed by this Act upon a director is in addition to any other liability that is by law imposed upon him. *New.*

Liability of  
directors  
for wages  
R.S.O. 1960,  
c. 230

1968, c. 35

**139.**—(1) The directors of a corporation are jointly and severally liable to the employees of the corporation to whom *The Master and Servant Act* applies for all debts that become due while they are directors for services performed for the corporation, not exceeding six months wages, and for the vacation pay accrued for not more than twelve months under *The Employment Standards Act, 1968* and the regulations thereunder or under any collective agreement made by the corporation.

Limitation  
of liability

(2) A director is liable under subsection 1,

(a) only if,

- (i) the corporation has been sued for the debt within six months after it has become due and execution against the corporation has been returned unsatisfied in whole or in part, or



- (ii) the corporation has within that period gone into liquidation or has been ordered to be wound up or has made an authorized assignment under the *Bankruptcy Act* (Canada), <sup>R.S.C. 1952, c. 14</sup> or a receiving order under the *Bankruptcy Act* (Canada) has been made against it and, in any such case, the claim for the debt has been proved; and

- (b) he is sued for the debt while he is a director or within two years after he ceases to be a director.

(3) After execution has been so returned against the cor- <sup>Idem</sup>  
poration, the amount recoverable against the director is the amount remaining unsatisfied on the execution.

(4) If the claim for the debt has been proved in liquidation <sup>Rights of</sup>  
or winding-up proceedings or under the *Bankruptcy Act* <sup>director</sup>  
(Canada), a director who pays the debt is entitled to any <sup>who pays</sup>  
preference that the creditor paid would have been entitled to <sup>the debt</sup>  
or, if a judgment has been recovered for the debt, the director is entitled to an assignment of the judgment. R.S.O. 1960, c. 71, s. 73 (1-4), *amended*.

**140.** The shareholders may, by resolution passed by a <sup>Removal</sup>  
majority of the votes cast at a general meeting duly called for <sup>of directors</sup>  
that purpose, remove any director before the expiration of his term of office and may, by a majority of the votes cast at the meeting, elect any person in his stead for the remainder of his term, but, where the directors have been elected by the method of voting provided by section 127, no director shall be removed from office where the votes cast against the resolution for his removal would, if cumulatively voted at an election of the full board of directors, be sufficient to elect one or more directors. R.S.O. 1960, c. 71, s. 66 (1), *amended*.

### *Officers*

**141.—**(1) A corporation shall have a president and a <sup>Officers</sup>  
secretary and such other officers as are provided for by <sup>by-law or by resolution of the directors.</sup>

(2) In the absence of other provisions in that behalf in the <sup>Election</sup>  
articles or by-laws, the directors, <sup>and</sup>  
<sup>appoint-</sup>  
<sup>ment</sup>

- (a) shall elect the president from among themselves;
- (b) shall appoint or elect the secretary; and
- (c) may appoint or elect one or more vice-presidents or other officers. R.S.O. 1960, c. 71, s. 302 (1, 2), *amended*.

Chairman  
of the  
board

**142.** A corporation may by special by-law,

- (a) provide for the election or appointment by the directors from among themselves of a chairman of the board;
- (b) define the duties of the chairman;
- (c) assign to the chairman all or any of the duties of the president or of any other officer of the corporation,

and, if the by-law assigns to the chairman any of the duties of the president, it shall also fix and prescribe the duties of the president. R.S.O. 1960, c. 71, s. 303, *amended*.

Qualifica-  
tions of  
chairman  
and  
president

**143.** Unless the articles or by-laws otherwise provide, no person shall be the president or chairman of the board of a corporation unless he is a director of the corporation but no other officer need be a director. R.S.O. 1960, c. 71, s. 304 (1), *amended*.

### *General*

Standards  
of care,  
etc., of  
directors

**144.** Every director and officer of a corporation shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the corporation, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. *New*.

Validity of  
acts of  
directors  
and officers

**145.** An act done by a director or by an officer is not invalid by reason only of any defect that is thereafter discovered in his appointment, election or qualification. R.S.O. 1960, c. 71, s. 305, *amended*.

Liability  
of directors  
and officers

**146.** Those directors and officers of a corporation who authorize or consent to a loan in contravention of section 17 are, until repayment of the loan, jointly and severally liable to the corporation and to its creditors for the debts of the corporation then existing or thereafter contracted to the amount of the loan with interest at the rate of 6 per cent a year. R.S.O. 1960, c. 71, s. 23 (4), *amended*.

Indemnifi-  
cation of  
directors

**147.**—(1) Subject to subsection 2, the by-laws of a corporation may provide that every director and officer of the corporation and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against,

- (a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against

him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and

- (b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the corporation.  
R.S.O. 1960, c. 71, s. 72, *amended*.

(2) No director or officer of a corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant. *New*.

(3) A corporation may purchase and maintain insurance for the benefit of a director or officer thereof, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of a contravention of section 144. *New*.

#### INSIDERS

**148.**—(1) A person who becomes an insider of a corporation shall, within ten days after the end of the month in which he becomes an insider, file with the Commission a report, as of the day on which he became an insider, of his direct or indirect beneficial ownership of or control or direction over securities of the corporation.

(2) If a person who is an insider of a corporation but has no direct or indirect beneficial ownership of or control or direction over securities of the corporation acquires direct or indirect beneficial ownership of or control or direction over any such securities, he shall, within ten days after the end of the month in which he acquired such direct or indirect beneficial ownership or such control or direction, file with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of or control or direction over securities of the corporation.

(3) A person who has filed or is required to file a report under subsection 1 or 2 and whose direct or indirect beneficial ownership of or control or direction over securities of the corporation changes from that shown or required to be shown in such report or in the last report filed by him under this section shall, within ten days following the end of the month in which such change takes place, provided that he was an

insider of the corporation at any time during such month, file with the Commission a report of his direct or indirect beneficial ownership of or control or direction over securities of the corporation at the end of such month and the change or changes therein that occurred during the month and giving such details of each transaction as may be required by the regulations. 1966, c. 28, s. 3, *part, amended*.

Reports  
may be  
inspected

**149.**—(1) All reports filed with the Commission under section 148 shall, upon payment of the prescribed fee, be open to public inspection at the offices of the Commission during normal business hours of the Commission, and any person may make extracts from such reports.

Publication  
of infor-  
mation  
contained  
in reports

(2) The Commission shall summarize in or as part of a monthly periodical for distribution to the public on payment of the prescribed fee therefor the information contained in the reports so filed. 1966, c. 28, s. 3, *part*.

Liability  
of insiders

**150.**—(1) Every insider of a corporation or associate or affiliate of such insider who, in connection with a transaction relating to the securities of the corporation, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person for any direct loss suffered by such person as a result of the transaction, unless the information was known or ought reasonably to have been known to such person at the time of the transaction, and is also accountable to the corporation for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of the transaction.

Limitation  
period

(2) An action to enforce any right created by subsection 1 may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action. 1966, c. 28, s. 3, *part*.

Order to  
commence  
action

**151.**—(1) Upon application by any person who was at the time of a transaction referred to in subsection 1 of section 150 or is at the time of the application an owner of securities of the corporation, the court may, if satisfied that,

(a) such person has reasonable grounds for believing that the corporation has a cause of action under section 150; and

(b) either,

(i) the corporation has refused or failed to commence an action under section 150 within sixty days after receipt of a written request from such person so to do, or



- (ii) the corporation has failed to prosecute diligently an action commenced by it under section 150,

make an order, upon such terms as to security for costs and otherwise as to the court seems fit, requiring the Commission to commence or continue an action in the name of and on behalf of the corporation to enforce the liability created by section 150.

(2) The applicant under subsection 1 shall give to the corporation and the Commission notice of his application, and the corporation and the Commission have the right to appear and be heard thereon. Notice to corporation and O.S.C.

(3) Every order made under subsection 1 shall provide that the corporation shall co-operate fully with the Commission in the institution and prosecution of the action and shall make available to the Commission all records, documents and other material or information known to the corporation or reasonably ascertainable by the corporation relevant to the action. 1966, c. 28, s. 3, *part*. Order to require corporation to co-operate

**152.** Upon the application of any interested person, the Commission may, if satisfied upon the circumstances of the particular case that there is adequate justification for so doing, make an order upon such terms and conditions as seem to the Commission to be expedient exempting in whole or in part any person from the requirements of section 148. *New*. Exception

#### DIVIDENDS

**153.**—(1) Subject to the articles of the corporation, the directors may declare and the corporation may pay dividends on its issued shares. Power to declare dividends

(2) A dividend may be paid in cash or in property not exceeding in value the amount of the dividend. Manner of payment

(3) The directors shall not declare and the corporation shall not pay any dividend when the corporation is insolvent, or any dividend the payment of which renders the corporation insolvent or that diminishes its capital. R.S.O. 1960, c. 71, s. 61 (1-3), *amended*. When dividend not to be declared

**154.**—(1) Notwithstanding anything in this Act, a corporation, Corporations with wasting assets

- (a) that for the time being carries on as its principal business the business of operating a producing mining, gas or oil property owned and controlled by it; or

- (b) at least 75 per cent of the assets of which are of a wasting character; or
- (c) incorporated for the object of acquiring the assets or a substantial part of the assets of a body corporate and administering such assets for the purpose of converting them into cash and distributing the cash among the shareholders of the corporation,

may declare and pay dividends out of the funds derived from the operations of the corporation.

Extent of  
impairment  
of capital

(2) The powers conferred by subsection 1 may be exercised notwithstanding that the value of the net assets of the corporation may be thereby reduced to less than its issued capital if the payment of the dividends does not reduce the value of its remaining assets to an amount insufficient to meet all the liabilities of the corporation exclusive of its issued capital.

Special  
by-law

(3) The powers conferred by subsection 1 may be exercised only under the authority of a special by-law.

Idem

(4) Where dividends have been paid by a corporation in any of the cases mentioned in subsection 1 without the authority of a by-law, the payment thereof is nevertheless valid if a by-law adopting and approving the payment is passed and confirmed in the same manner as for a special by-law. R.S.O. 1960, c. 71, s. 61 (5-8), *amended*.

Stock  
dividends

**155.** For the amount of any dividend that the directors may declare payable in cash, they may declare a stock dividend and issue therefor shares of the corporation as fully paid. R.S.O. 1960, c. 71, s. 62, *amended*.

#### RECORDS

Records

**156.**—(1) Where this Act requires a record to be kept by a corporation, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device.

Where  
not in  
bound  
book

(2) Where a record is not kept in a bound book, the corporation shall,

- (a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and
- (b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the record. R.S.O. 1960, c. 71, s. 1, cls. *a, h*, *amended*.

(3) The bound or looseleaf book or, where the record is not kept in a bound or looseleaf book, the information in the form in which it is made available under clause *b* of subsection 2 is admissible in evidence as *prima facie* proof, before and after dissolution of the corporation, of all facts stated therein. R.S.O. 1960, c. 71, s. 314, *amended*. <sup>Admissibility of records in evidence</sup>

(4) No person shall remove, withhold or destroy information required by this Act or the regulations to be recorded, or <sup>False information</sup>

(a) record or assist in recording any information in a record; or

(b) make information purporting to be accurate available in a form referred to in clause *b* of subsection 2,

knowing it to be untrue. R.S.O. 1960, c. 71, s. 316, *amended*.

**157.** A corporation shall cause to be kept the following records: <sup>Records</sup>

1. A copy of the articles of the corporation.

2. All by-laws and resolutions, including special by-laws and special resolutions of the corporation.

3. A register of security holders in which is set out the names alphabetically arranged or alphabetically indexed in appropriate categories of,

i. all persons who are or have been within ten years registered as shareholders of the corporation and the address including the street and number, if any, of every such person while a holder, in which are set out also the number and class of shares held by such holder and, where the shares were issued before this Act comes into force and not fully paid, the amounts paid up and remaining unpaid on such shares,

ii. all persons who are or have been holders of debt obligations other than debt obligations in bearer form of the corporation and the address including the street and number, if any, of every such person while a holder in which are set out also the class or series and principal amount of the debt obligations held by such holder.

4. A register of directors in which are set out the names and residence addresses, including the street and

number, if any, of all persons who are or have been directors of the corporation with the several dates on which each became or ceased to be a director.

5. Proper accounting records in which are set out all financial and other transactions of the corporation including, without limiting the generality of the foregoing, records of,
  - i. all sums of money received and disbursed by the corporation and the matters with respect to which receipt and disbursement took place,
  - ii. all sales and purchases of the corporation,
  - iii. the assets and liabilities of the corporation, and
  - iv. all other transactions affecting the financial position of the corporation.
6. The minutes of all proceedings at meetings of shareholders, directors and any executive committee. R.S.O. 1960, c. 71, ss. 312 (1), 313, 315, *amended*.

Register of transfers

**158.** Every corporation shall cause to be kept a register of transfers in which all transfers of securities issued by the corporation in registered form and the date and other particulars of each transfer shall be set out. R.S.O. 1960, c. 71, s. 40, *amended*.

Transfer agents

**159.** A corporation may appoint a transfer agent to keep the register of security holders and the register of transfers and may also appoint one or more branch transfer agents to keep branch registers of security holders and branch registers of transfers. R.S.O. 1960, c. 71, s. 41, *amended*.

Where registers to be kept

**160.—(1)** The register of security holders and the register of transfers shall be kept at the head office of the corporation or at such other office or place in Ontario as is appointed by resolution of the directors, and the branch register or registers of security holders and the branch register or registers of transfers may be kept at such office or offices of the corporation or other place or places, either in or outside Ontario, as are appointed by resolution of the directors.

Valid registration

**(2)** Registration of the transfer of a security of the corporation in the register of transfers or a branch register of transfers is a complete and valid registration for all purposes.

Entry in branch transfer register

**(3)** In each branch register of transfers shall be recorded only the particulars of the transfers of securities registered in that branch register of transfers.



(4) Particulars of every transfer of securities registered in every branch register of transfers shall be recorded in the register of transfers. Entry in register of transfers R.S.O. 1960, c. 71, s. 42, *amended*.

**161.**—(1) The records mentioned in sections 157 and 158 shall, during the normal business hours of the corporation, be open to examination by any director and shall, except as provided in section 160 and in subsections 2 and 3 of this section, be kept at the head office of the corporation. Records open to examination by directors

(2) A corporation may keep at any place where it carries on business such parts of the accounting records as relate to the operations, business and assets and liabilities of the corporation carried on, supervised or accounted for at such place, but there shall be kept at the head office of the corporation or such other place as is authorized under subsection 3 such records as will enable the directors to ascertain quarterly with reasonable accuracy the financial position of the corporation. Records of account at branch

(3) Where a corporation,

Order for removal of records

(a) shows, to the satisfaction of the Minister, the necessity of keeping all or any of the records mentioned in subsection 1 at a place other than the head office of the corporation; and

(b) gives to the Minister adequate assurance, by surety bond or otherwise, that such records will be open for examination,

(i) at the head office or some other place in Ontario designated by the Minister, and

(ii) by any person who is entitled to examine them and who has applied to the Minister for such an examination,

the Minister may, by order and upon such terms as he thinks fit, permit the corporation to keep such of them at such place or places, other than the head office, as he thinks fit. R.S.O. 1960, c. 71, s. 317 (1-3), *amended*.

(4) The Minister may by order upon such terms as he sees fit rescind any order made under subsection 3 or any order made by the Lieutenant Governor in Council under a predecessor of that subsection. R.S.O. 1960, c. 71, s. 317 (5), *amended*. Rescission of orders made under subs. 3

**162.**—(1) Subject to section 163, the records of a corporation mentioned in section 157 or 158, other than accounting records, resolutions of directors and the minutes of pro- Examination of records by shareholders and creditors

ceedings at meetings of directors and of executive committees, shall, during the normal business hours of the corporation and at the place or places where they are kept, be open to examination by the shareholders and creditors or their agents or personal representatives, and any of them may make extracts therefrom.

Idem

(2) No person shall refuse to permit a person entitled thereto to inspect such records or to make extracts therefrom. R.S.O. 1960, c. 71, s. 318, *amended*.

List of  
security  
holders

**163.**—(1) A shareholder or creditor or the agent or personal representative of any of them shall not make or cause to be made a list of all or any of the security holders of the corporation unless he has filed with the corporation or its agent his affidavit in the following form, and, where the security holder or creditor is a body corporate, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the body corporate:

Form of Affidavit

Province of Ontario } County of }	In the matter of ( <i>Insert name of corporation</i> )
--------------------------------------	---

I, ....., of the ..... of .....,  
in the ..... of .....,  
make oath and say:

1. I am a shareholder (*or* creditor) of the above-named corporation.

(*Where the shareholder or creditor is a body corporate, indicate office and authority of deponent in paragraph 1.*)

2. I am applying to make a list of the shareholders (debt obligation holders) of the above-named corporation.

3. I require the list of shareholders (debt obligation holders) only for purposes connected with the above-named corporation.

4. The list of shareholders (debt obligation holders) and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

Use of  
list

(2) No person, other than the corporation or its agent, shall use a list of all or any of the security holders of a corporation obtained under this section,

(a) for the purpose of delivering or sending to all or any of the security holders advertising or other printed matter relating to securities, other than the securities of the corporation; or

(b) for any purpose not connected with the corporation.

(3) Purposes connected with the corporation include any effort to influence the voting of shareholders or debt obligation holders at any meeting thereof and include the acquisition or offering of shares to acquire control or to effect an amalgamation or reorganization. R.S.O. 1960, c. 71, s. 319 (1-3), *amended*. Purposes connected with the corporation defined

**164.**—(1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection 2, may require a corporation, other than a corporation that is not offering its securities to the public, or its transfer agent to furnish within ten days from the filing of the affidavit a list setting out the names alphabetically arranged of all persons who are shareholders of the corporation, the number of shares owned by each such person and the address of each such person as shown on the records of the corporation made up to a date not more than ten days before the date of filing the affidavit. Where list of shareholders to be furnished

(2) The affidavit referred to in subsection 1 shall be made by the applicant and shall be in the following form: Form of affidavit

Form of Affidavit

Province of Ontario } County of }	In the matter of ( <i>Insert name of corporation</i> )
--------------------------------------	---

I, ..... of the ..... of .....  
in the ..... of .....  
make oath and say:

*(Where the applicant is a body corporate, indicate office and authority of deponent.)*

1. I hereby apply for a list of the shareholders of the above-named corporation.

2. I require the list of shareholders only for purposes connected with the above-named corporation.

3. The list of shareholders and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

(3) Where the applicant is a body corporate, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the body corporate. Idem, where applicant a body corporate

(4) No person shall use a list of all or any of the shareholders of a corporation obtained under this section, Use of list

(a) for the purpose of delivering or sending to all or any of the shareholders advertising or other printed matter relating to securities other than the securities of the corporation; or

(b) for any purpose not connected with the corporation.

Furnishing  
list

(5) Every corporation or transfer agent shall furnish a list in accordance with subsection 1 when so required.

Purposes  
connected  
with  
corporation  
defined

(6) Purposes connected with the corporation include any effort to influence the voting of shareholders at any meeting thereof, any offer to acquire shares in the corporation or any effort to effect an amalgamation or reorganization. 1966, c. 28, s. 17, *part, amended*.

Trafficking  
in lists

**165.** No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the security holders of a corporation. 1966, c. 28, s. 17, *part, amended*.

Power of  
court to  
correct

**166.**—(1) Where the name of a person is, without sufficient cause, entered in or omitted from the records of a corporation other than accounting records, or if default is made or unnecessary delay takes place in entering therein the fact of any person having ceased to be a security holder of the corporation, the person or security holder aggrieved, or any security holder of the corporation, or the corporation itself, may apply to the court for an order that the records be rectified, and the court may dismiss such application or make an order for the rectification of the records and may direct the corporation to compensate the party aggrieved for any damage he has sustained.

Decision  
as to title

(2) The court may, in any proceeding under this section, decide any question relating to the entitlement of a person who is a party to the proceeding to have his name entered in or omitted from such records whether the question arises between two or more security holders or alleged security holders, or between any security holders or alleged security holders and the corporation.

Trial  
of issue

(3) The court may direct an issue to be tried. R.S.O. 1960, c. 71, s. 320 (1-3), *amended*.

Jurisdiction  
of courts  
not  
affected

(4) This section does not deprive any court of any jurisdiction it otherwise has. R.S.O. 1960, c. 71, s. 320 (5).

#### AUDITORS AND FINANCIAL STATEMENTS

Exemption  
from  
audit  
provisions

**167.**—(1) Subject to subsection 2, where in a financial year all the shareholders of a corporation that,

(a) is not offering its shares to the public;



- (b) has five or fewer shareholders; and
- (c) has assets not exceeding \$500,000 and sales and gross operating revenues not exceeding \$1,000,000, as shown on the financial statement of the corporation for the preceding year,

consent in writing, the corporation is exempt from sections 168, 169, 170 and 171 in respect of the year in which the consent is given.

(2) Subsection 1 does not apply to a subsidiary corporation <sup>Subsidiary corporations</sup> unless its holding corporation is exempted under subsection 1 at the time the consent of the shareholders is given. *New.*

**168.**—(1) The shareholders of a corporation at their first <sup>Auditors</sup> general meeting shall appoint one or more auditors to hold office until the close of the first annual meeting and, if the shareholders fail to do so, the directors shall forthwith make such appointment or appointments.

(2) The shareholders shall at each annual meeting appoint <sup>Idem</sup> one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

(3) The directors may fill any casual vacancy in the office <sup>Casual vacancy</sup> of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

(4) The shareholders may, by resolution passed by a major- <sup>Removal of auditor</sup> ity of the votes cast at a general meeting duly called for the purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term. R.S.O. 1960, c. 71, s. 80 (1-4), *amended.*

(5) Before calling a general meeting for the purpose speci- <sup>Notice to auditor</sup> fied in subsection 4, the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor,

- (a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and
- (b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

Right of  
auditor  
to make  
representations

(6) The auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing concerning his proposed removal as auditor, and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting. *New.*

Remuneration

(7) The remuneration of an auditor appointed by the shareholders shall be fixed by the shareholders, or by the directors if they are authorized so to do by the shareholders, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

Appointment by court

(8) If for any reason no auditor is appointed, the court may, on the application of a shareholder, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the corporation for his or their services.

Notice of appointment

(9) The corporation shall give notice in writing to an auditor of his appointment forthwith after the appointment is made. R.S.O. 1960, c. 71, s. 80 (5-7), *amended*.

Notice to auditor of proposal to appoint another

**169.**—(1) If, in the information circular required by subsection 1 of section 118, reference is made to action proposed to be taken at an annual meeting of shareholders with respect to the appointment of an auditor other than the incumbent auditor, the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the incumbent auditor written notice of management's intention not to recommend his re-appointment at the annual meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed.

Right of incumbent auditor to make representations

(2) The incumbent auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing concerning the proposal not to re-appoint him as auditor, and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting. *New.*

Persons disqualified as auditors

**170.**—(1) No person shall be appointed or act as auditor of a corporation who is a director, officer or employee of the corporation or of an affiliate of the corporation or who is a partner, employer or employee of any such director, officer or employee or who is a related person to any director or officer of the corporation or of an affiliate of the corporation. R.S.O. 1960, c. 71, s. 81 (1), *amended*.

(2) No person shall be appointed or act as auditor of a corporation if he or any partner or employer of or related person to him beneficially owns, directly or indirectly, any securities of the corporation or, if the corporation is a subsidiary, any securities of its holding corporation. <sup>Idem</sup>

(3) Subsection 2 does not apply to a person, partner, employer or related person, as the case may be, if the person, partner, employer or related person is not empowered to decide whether securities of the corporation or its holding corporation, as the case may be, are to be beneficially owned, directly or indirectly, by him, or if he is not entitled to vote in respect thereof. <sup>Where subs. 2 does not apply</sup>

(4) Where, on the date this section comes into force, an auditor or his partner, employer or related person owns securities as set out in subsection 2, notwithstanding subsection 2, he may for a period of two years from the date this section comes into force continue to act as auditor if he discloses in the report required under subsection 2 of section 171 that he or his partner, employer or related person so owns such securities but, at the expiration of such period, he shall cease to act as auditor unless he or his partner, employer or related person, as the case may be, has disposed of such securities. <sup>Idem</sup>

(5) No person shall be appointed a receiver or a receiver and manager or liquidator of any corporation of which he or a related person is the auditor or has been auditor within the two years preceding his appointment as receiver or receiver and manager or liquidator. <sup>Auditors not to be appointed receivers, etc.</sup>

(6) No person who is appointed a trustee of the estate of a corporation under the *Bankruptcy Act* (Canada) or a related person shall be appointed or act as auditor of the corporation. <sup>Trustee in bankruptcy not to be auditor</sup> R.S.C. 1952, c. 14 *New.*

**171.**—(1) The auditor shall make such examination as will enable him to report to the shareholders as required by subsection 2. R.S.O. 1960, c. 71, s. 82 (1). <sup>Annual audit</sup>

(2) The auditor shall make a report to the shareholders on the financial statement, other than the part thereof that relates to the period referred to in subclause ii of clause b of subsection 1 of section 172, to be laid before the corporation at any annual meeting during his term of office and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. R.S.O. 1960, c. 71, s. 82 (2); 1964, c. 10, s. 2; 1966, c. 28, s. 6 (1), *amended*. <sup>Auditor's report</sup>

Idem (3) Where the opinion expressed in a report under subsection 2 is not an unqualified opinion, the auditor shall state in his report the reasons therefor. *New.*

Idem (4) If the financial statement contains a statement of changes in net assets or a statement of source and application of funds, the auditor shall include in his report a statement whether in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein. 1966, c. 28, s. 6 (2), *amended.*

Idem (5) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding corporation are included in the financial statement of the holding corporation, the report of the auditor of the holding corporation required by subsection 2 may refer to the reports of auditors of one or more of such subsidiaries, but such reference shall not derogate from the duty of the auditor of the holding corporation to comply with subsection 2. *New.*

Idem (6) The auditor in his report shall make such statements as he considers necessary,

(a) if the corporation's financial statement is not in agreement with its accounting records;

(b) if the corporation's financial statement is not in accordance with the requirements of this Act;

(c) if he has not received all the information and explanations that he has required; or

(d) if proper accounting records have not been kept, so far as appears from his examination. R.S.O. 1960, c. 71, s. 82 (3).

Right of access, etc. (7) The auditor of a corporation has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers and employees of the corporation such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. R.S.O. 1960, c. 71, s. 82 (4), *amended.*

Idem (8) The auditor of a holding corporation has right of access at all times to all records, documents, accounts and vouchers of all subsidiaries of the corporation and is entitled to require from the directors, officers and employees of each such subsidiary such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. *New.*



(9) Where a subsidiary referred to in subsection 8 is a body <sup>Idem</sup> corporate to which this Act does not apply, the holding corporation shall make available to its auditor the records, documents, accounts and vouchers of that subsidiary and shall require the directors, officers and employees of that subsidiary to make available to its auditor the information and explanation required by subsection 8.

(10) The auditor of a corporation is entitled to attend any meeting of shareholders of the corporation and to receive all notices and other communications relating to any such meeting that a shareholder is entitled to receive, and to be heard at any such meeting that he attends on any part of the business of the meeting that concerns him as auditor. R.S.O. 1960, c. 71, s. 82 (5). <sup>Auditor may attend shareholders' meetings</sup>

(11) Any shareholder of a corporation, whether or not he is entitled to vote at meetings of shareholders, may, by notice in writing to the corporation given five days or more before any meeting of shareholders, require the attendance of the auditor at such meeting at the corporation's expense, and in such event the auditor shall attend the meeting. <sup>Shareholder may require auditor's attendance at shareholders' meetings</sup>

(12) At any meeting of shareholders the auditor, if present, shall answer inquiries directed to him concerning the bases upon which he formed the opinion stated in the report made under subsection 2. *New.* <sup>Auditors must answer inquiries at shareholders' meetings</sup>

**172.**—(1) The directors shall lay before each annual meeting of shareholders, <sup>Information to be laid before annual meeting</sup>

(a) in the case of a corporation that is not offering its securities to the public, a financial statement for the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, made up of,

(i) a statement of profit and loss for such period

(ii) a statement of surplus for such period, and

(iii) a balance sheet as at the end of such period;

(b) in the case of a corporation that is offering its securities to the public, a comparative financial statement relating separately to,

- (i) the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, and
- (ii) the period covered by the financial year next preceding such latest completed financial year, if any,

made up of,

- (iii) a statement of profit and loss for each period,
- (iv) a statement of surplus for each period,
- (v) in the case of a corporation that is a mutual fund company or investment company as defined in the regulations under *The Securities Act, 1966*, a statement of changes in net assets for each period,
- (vi) in the case of a corporation other than one referred to in subclause v, a statement of source and application of funds for each period, and
- (vii) a balance sheet as at the end of each period;

(c) the report of the auditor to the shareholders; and

(d) such further information respecting the financial position of the corporation as the articles or by-laws of the corporation require. R.S.O. 1960, c. 71, s. 83 (1); 1966, c. 28, s. 7 (1), *amended*.

Designation  
of  
statements

(2) It is not necessary to designate the statements referred to in subsection 1 as the statement of profit and loss, statement of surplus, statement of changes in net assets, statement of source and application of funds and balance sheet. 1966, c. 28, s. 7 (2), *amended*.

Auditor's  
report  
to be read

(3) The report of the auditor to the shareholders shall be read at the annual meeting and shall be open to inspection at the meeting by any shareholder. R.S.O. 1960, c. 71, s. 83 (3).

Statement  
of profit  
and loss

**173.**—(1) The statement of profit and loss to be laid before an annual meeting shall be drawn up so as to present fairly the results of the operations of the corporation for the period covered by the statement and so as to distinguish severally at least,

- (a) in the case of a corporation that is offering its securities to the public, sales or gross operating revenue;

- (b) the operating profit or loss before including or providing for other items of income or expense that are required to be shown separately;
- (c) income from investments in subsidiaries whose financial statements are not consolidated with those of the corporation;
- (d) income from investments in affiliated corporations other than subsidiaries;
- (e) income from other investments;
- (f) non-recurring profits and losses of significant amount including profits or losses on the disposal of capital assets and other items of a special nature to the extent that they are not shown separately in the statement of earned surplus;
- (g) any provision for depreciation or for obsolescence or for depletion;
- (h) amounts written off for goodwill or amortization of any other intangible assets to the extent that they are not shown separately in the statement of earned surplus;
- (i) interest on indebtedness initially incurred for a term of more than one year, including amortization of debt discount or premium and expense; and
- (j) taxes on income imposed by any taxing authority,

and shall show the net profit or loss for the financial period. R.S.O. 1960, c. 71, s. 84 (1); 1966, c. 28, s. 8 (1, 2), *amended*.

(2) Notwithstanding subsection 1, items of the natures Notes described in clauses *g* and *h* of subsection 1 may be shown by way of note to the statement of profit and loss. R.S.O. 1960, c. 71, s. 84 (2); 1966, c. 28, s. 8 (3).

(3) A corporation that is offering its securities to the public may apply to the Commission for an order permitting sales or gross operating revenue referred to in clause *a* of subsection 1 of this section or subclause *i* of clause *c* of subsection 1 of section 185 to be omitted from the statement of profit and loss or the interim financial statement, as the case may be, and the Commission may, on such terms and conditions as it may impose, permit such omission where it is satisfied that in the circumstances the disclosure of such information would be unduly detrimental to the interests of the corporation. 1966, c. 28, s. 8 (4), *part, amended*. Order for omission of sales or gross operating revenue

(4) The statement of profit and loss of a mutual fund company or an investment company, as defined in the regulations under *The Securities Act, 1966*, shall also distinguish the average net investment income per share and an item of this nature may be shown by way of note to the statement of profit and loss. *New*. Mutual fund or investment companies 1966, c. 142

Statement  
of surplus

**174.**—(1) The statement of surplus to be laid before an annual meeting shall be drawn up so as to present fairly the transactions reflected in the statement and shall show separately a statement of contributed surplus and a statement of earned surplus.

Contributed  
surplus

(2) The statement of contributed surplus shall be drawn up so as to include and distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period including,
  - i. the amount of surplus arising from the issue of shares or the reorganization of the corporation's issued capital, including *inter alia*,
    - a. the amount of premiums received on the issue of shares at a premium,
    - b. the amount of surplus realized on the purchase for cancellation of shares, and
  - ii. donations of cash or other property by shareholders.
3. The balance of such surplus at the end of the financial period.

Earned  
surplus

(3) The statement of earned surplus shall be drawn up so as to distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period and without restricting the generality of the foregoing at least the following:
  - i. The amount of the net profit or loss for the financial period.
  - ii. The amount of dividends declared on each class of shares.
  - iii. The amount transferred to or from reserves.
3. The balance of such surplus at the end of the financial period. R.S.O. 1960, c. 71, s. 85.



**175.**—(1) The statement of changes in net assets referred to in subclause v of clause *b* of subsection 1 of section 172 and clause *a* of subsection 1 of section 185 shall be drawn up so as to present fairly the information shown therein for the period and shall show separately at least,

- (a) net assets at beginning of the period;
- (b) net investment income or loss;
- (c) aggregate proceeds on sale of portfolio securities;
- (d) aggregate cost of portfolio securities owned at beginning of the period;
- (e) aggregate cost of purchases of portfolio securities;
- (f) aggregate cost of portfolio securities owned at end of the period;
- (g) aggregate cost of portfolio securities sold;
- (h) realized profit or loss on securities sold;
- (i) distributions, showing separately the amount out of net investment income and out of realized profits;
- (j) proceeds from shares issued;
- (k) cost of shares redeemed;
- (l) net increase or decrease in unrealized appreciation or depreciation of portfolio securities;
- (m) net assets at end of the period;
- (n) net asset value per share at end of the period;
- (o) net asset value per share at beginning of the period;
- (p) distribution per share out of net investment income;
- (q) distribution per share out of realized profits.

(2) Notwithstanding subsection 1, items of the nature described in clauses *n*, *o*, *p* and *q* of subsection 1 may be shown by way of note to the statement of changes in net assets.

*New.*

Statement  
of source  
and  
application  
of funds

**176.** The statement of source and application of funds referred to in subclause vi of clause *b* of subsection 1 of section 172 and clause *b* of subsection 1 of section 185 shall be drawn up so as to present fairly the information shown therein for the period, and shall show separately at least,

(a) funds derived from,

- (i) current operations,
- (ii) sale of non-current assets, segregating investments, fixed assets and intangible assets,
- (iii) issue of debt obligations or other indebtedness maturing more than one year after issue, and
- (iv) issue of shares; and

(b) funds applied to,

- (i) purchase of non-current assets, segregating investments, fixed assets and intangible assets,
- (ii) redemption or other retirement of debt obligations or repayment of other indebtedness maturing more than one year after issue,
- (iii) redemption or other retirement of shares, and
- (iv) payment of dividends. 1966, c. 28, s. 9.

Balance  
sheet

**177.—**(1) The balance sheet to be laid before an annual meeting shall be drawn up so as to present fairly the financial position of the corporation as at the date to which it is made up and so as to distinguish severally at least the following:

1. Cash.
2. Debts owing to the corporation from its directors, officers or shareholders, except debts of reasonable amount arising in the ordinary course of its business that are not overdue having regard to its ordinary terms of credit.
3. Debts owing to the corporation, whether on account of a loan or otherwise, from subsidiaries whose financial statements are not consolidated with those of the corporation.
4. Debts owing to the corporation, whether on account of a loan or otherwise, from affiliated corporations other than subsidiaries.

5. Other debts owing to the corporation segregating those that arose otherwise than in the ordinary course of its business.
6. Inventory, stating the basis of valuation.
7. Shares, bonds, debentures and other investments owned by the corporation, except those referred to in paragraphs 8 and 9, stating their nature and the basis of their valuation and showing separately those that are marketable with a notation of their market value.
8. Securities of subsidiaries whose financial statements are not consolidated with those of the corporation, stating the basis of valuation.
9. Securities of affiliated corporations other than subsidiaries, stating the basis of valuation.
10. Lands, buildings, and plant and equipment, stating the basis of valuation, whether cost or otherwise, and, if valued on the basis of an appraisal, the date of appraisal, the name of the appraiser, the basis of the appraisal value and, if such appraisal took place within five years preceding the date to which the balance sheet is made up, the disposition in the accounts of the corporation of any amounts added to or deducted from such assets on appraisal and also the amount or amounts accumulated in respect of depreciation, obsolescence and depletion.
11. There shall be stated under separate headings, in so far as they are not written off,
  - i. expenditures on account of future business,
  - ii. any expense incurred in connection with any issue of shares,
  - iii. any expense incurred in connection with any issue of debt obligations, including any discount thereon, and
  - iv. any one or more of the following: goodwill, franchises, patents, copyrights, trade marks and other intangible assets and the amount if any, by which the value of any such assets has been written up within a period of five years preceding the date to which the balance sheet is made up.

12. The aggregate amount of any outstanding loans or guarantees under clauses *c* and *d* of subsection 2 of section 17.
13. Bank loans and overdrafts.
14. Debts owing by the corporation on loans from its directors, officers or shareholders.
15. Debts owing by the corporation to subsidiaries whose financial statements are not consolidated with those of the corporation, whether on account of a loan or otherwise.
16. Debts owing by the corporation to affiliated corporations other than subsidiaries whether on account of a loan or otherwise.
17. Other debts owing by the corporation, segregating those that arose otherwise than in the ordinary course of its business.
18. Liability for taxes, including the estimated liability for taxes in respect of the income of the period covered by the statement of profit and loss.
19. Dividends declared but not paid.
20. Deferred income.
21. Debt obligations issued by the corporation, stating the interest rate, the maturity date, the amount outstanding and the existence of sinking fund, redemption requirements and conversion rights, if any.
22. The authorized capital, giving the number of each class of shares and a brief description of each such class, and indicating therein any class of shares that is redeemable and the redemption price thereof.
23. The issued capital, giving the number of shares of each class issued and outstanding and the amount received therefor that is attributable to capital, and showing,
  - i. the number of shares of each class issued since the date of the last preceding balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration, and



ii. where any shares issued before this Act comes into force have not been fully paid,

a. the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and

b. the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid.

24. Contributed surplus.

25. Earned surplus.

26. Reserves, showing the amounts added thereto and the amounts deducted therefrom during the financial period.

27. The number of common shares purchased and the number of the common shares resold since the date of the last preceding balance sheet, giving the date of each such purchase and resale and the price at which each such purchase or resale was made. R.S.O. 1960, c. 71, s. 86 (1); 1966, c. 28, s. 10 (1-3), *amended*.

(2) Explanatory information or particulars of any item <sup>Notes</sup> mentioned in subsection 1 may be shown by way of note to the balance sheet. R.S.O. 1960, c. 71, s. 86 (2).

**178.**—(1) There shall be stated by way of note to the <sup>Notes to financial statement</sup> financial statement particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of any of the statements with any of those for the preceding period, and the effect, if material, of any such change upon the profit or loss for the period. R.S.O. 1960, c. 71, s. 87 (1).

(2) For the purpose of subsection 1, a change in accounting <sup>Change in accounting practice</sup> principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period, even though such change did not have a material effect upon the profit or loss for the period. 1962-63, c. 24, s. 3 (1).

(3) Where applicable, the following matters shall be referred <sup>Idem</sup> to in the financial statement or by way of note thereto:

1. The basis of conversion of amounts from currencies other than the currency in which the financial statement is expressed.
2. Foreign currency restrictions that affect the assets of the corporation.
3. Contractual obligations that will require abnormal expenditures in relation to the corporation's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts.
4. Material contractual obligations in respect of long-term leases, including, in the year in which the transaction was effected, the principal details of any sale and lease transaction.
5. Contingent liabilities, stating their nature and, where practicable, the approximate amounts involved.
6. Any liability secured otherwise than by operation of law on any asset of the corporation, stating the liability so secured.
7. Any default of the corporation in principal, interest, sinking fund or redemption provisions with respect to any issue of its debt obligations or credit agreements.
8. The gross amount of arrears of dividends on any class of shares and the date to which such dividends were last paid.
9. Where a corporation has contracted to issue shares or has given an option to purchase shares, the class and number of shares affected, the price and the date for issue of the shares or exercise of the option.
10. The aggregate direct remuneration paid or payable by the corporation and its subsidiaries whose financial statements are consolidated with those of the corporation to the directors and the senior officers and, as a separate amount, the aggregate direct remuneration paid or payable to such directors and senior officers by the subsidiaries of the corporation whose financial statements are not consolidated with those of the corporation.

11. In the case of a holding corporation, the aggregate of any shares in, and the aggregate of any debt obligations of, the holding corporation held by subsidiary corporations whose financial statements are not consolidated with those of the holding corporation.
12. The amount of any loans by the corporation, or by a subsidiary corporation, otherwise than in the ordinary course of business, during the corporation's financial period, to the directors or officers of the corporation.
13. Any restriction by the articles or by-laws of the corporation or by contract on the payment of dividends that is significant in the light of the corporation's financial position.
14. Any event or transaction, other than one in the normal course of business operations, between the date to which the financial statement is made up and the date of the auditor's report thereon that materially affects the financial statement. R.S.O. 1960, c. 71, s. 87 (2); 1962-63, c. 24, s. 3 (2); 1966, c. 28, s. 11 (1).
15. In the case of a corporation that is offering its securities to the public, the amount of any obligation for pension benefits arising from service before the date of the balance sheet, whether or not such obligation has been provided for in the accounts of the corporation, the manner in which the corporation proposes to satisfy such obligation and the basis on which it has charged or proposes to charge the related costs against operations. 1966, c. 28, s. 11 (2), *amended*.
16. Brief particulars of any action to which the corporation is a party commenced under section 99 during the period. *New*.

(4) A note to a financial statement is a part of it. R.S.O. <sup>Idem</sup> 1960, c. 71, s. 87 (3).

**179.**—(1) A corporation, in this section referred to as “the holding corporation”, may include in the financial statement to be submitted at an annual meeting the assets and liabilities and income and expense of any one or more of its subsidiaries, making due provision for minority interests, if any, and indicating in such financial statement that it is presented in consolidated form. <sup>Consolidated financial statement</sup>

Non-  
consolidated  
financial  
statements

(2) Where the assets and liabilities and income and expense of any one or more subsidiaries of the holding corporation are not so included in the financial statement of the holding corporation,

(a) the financial statement of the holding corporation shall include a statement setting forth,

(i) the reason why the assets and liabilities and income and expense of such subsidiary or subsidiaries are not included in the financial statement of the holding corporation,

(ii) if there is only one such subsidiary, the amount of the holding corporation's proportion of the profit or loss of the subsidiary for the financial period coinciding with or ending in the financial period of the holding corporation, or, if there is more than one such subsidiary, the amount of the holding corporation's proportion of the aggregate profits less losses, or losses less profits, of all the subsidiaries for the respective financial periods coinciding with or ending in the financial period of the holding corporation,

(iii) the amount included as income from such subsidiary or subsidiaries in the statement of profit and loss of the holding corporation and the amount included therein as a provision for the loss or losses of the subsidiary or subsidiaries,

(iv) if there is only one such subsidiary, the amount of the holding corporation's proportion of the undistributed profits of the subsidiary earned since the acquisition of the shares of the subsidiary by the holding corporation to the extent that such amount has not been taken into the accounts of the holding corporation, or, if there is more than one such subsidiary, the amount of the holding corporation's proportion of the aggregate undistributed profits of all the subsidiaries earned since the acquisition of their shares by the holding corporation less its proportion of the losses, if any suffered by any subsidiary since the acquisition of its shares to the extent that such amount has not been taken into the accounts of the holding corporation,



- (v) any qualifications contained in the report of the auditor of any such subsidiary on its financial statement for the financial period ending as aforesaid, and any note or reference contained in that financial statement to call attention to a matter that, apart from the note or reference, would properly have been referred to in such a qualification, in so far as the matter that is the subject of the qualification or note is not provided for by the corporation's own financial statement and is material from the point of view of its shareholders;
- (b) if for any reason the directors of the holding corporation are unable to obtain such information as is necessary for the preparation of the statement that is to be included in the financial statement of the holding corporation, the directors who sign the financial statement shall so report in writing and their report shall be included in the financial statement in lieu of the statement;
- (c) if, in the opinion of the auditor of the holding corporation, adequate provision has not been made in the financial statement of the holding corporation for the holding corporation's proportion,
  - (i) where there is only one such subsidiary, of the loss of the subsidiary suffered since acquisition of its shares by the holding corporation, or
  - (ii) where there is more than one such subsidiary, of the aggregate losses suffered by the subsidiaries since acquisition of their shares by the holding corporation in excess of its proportion of the undistributed profits, if any, earned by any of the subsidiaries since such acquisition,

the auditor shall state in his report the additional amount that in his opinion is necessary to make full provision therefor. R.S.O. 1960, c. 71, s. 89, *amended*.

(3) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding corporation are included in the financial statement of the holding corporation, true copies of the latest financial statement of the subsidiary or subsidiaries shall be kept on hand by the holding corporation at its head office and shall be open to examination by the shareholders of the holding corporation

Copies of  
subsidiary  
statements

on request during the normal business hours of the holding corporation, but the directors of the holding corporation may by resolution refuse the right of such examination if the examination would be unduly detrimental to the interests of the corporation or the subsidiary or subsidiaries, which resolution may, on the application of any such shareholder to the Commission, be set aside by the Commission. R.S.O. 1960, c. 71, s. 89 (2) (c), *amended*.

Insigni-  
ficant  
circum-  
stances

**180.** Notwithstanding sections 173 to 179, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance. R.S.O. 1960, c. 71, s. 88.

Reserve

**181.** In a financial statement, the term "reserve" shall be used to describe only,

- (a) amounts appropriated from earned surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred;
- (b) amounts appropriated from earned surplus pursuant to the articles or by-laws of the corporation for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred; and
- (c) amounts appropriated from earned surplus in accordance with the terms of a contract and that can be restored to the earned surplus when the conditions of the contract are fulfilled. R.S.O. 1960, c. 71, s. 91.

Audit  
committee

**182.—(1)** The directors of a corporation that is offering its securities to the public shall elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom a majority shall not be officers or employees of the corporation or an affiliate of the corporation, to hold office until the next annual meeting of the shareholders.

Chairman

**(2)** The members of the audit committee shall elect a chairman from among their number.

Review

**(3)** The corporation shall submit the financial statement to the audit committee for its review and the financial statement shall thereafter be submitted to the board of directors.

(4) The auditor has the right to appear before and be heard <sup>Hearing of auditor</sup> at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

(5) Upon the request of the auditor, the chairman of the <sup>Idem</sup> audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or shareholders. *New.*

**183.** The financial statement shall be approved by the <sup>Approval by directors</sup> board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, and the auditor's report shall be attached to or accompany the financial statement. R.S.O. 1960, c. 71, s. 92, *amended.*

**184.**—(1) A corporation that is offering its securities to <sup>Mailing of financial statement to shareholders</sup> the public shall, twenty-one days or more before the date of the annual meeting of shareholders, send by prepaid mail to each shareholder at his latest address as shown on the records of the corporation a copy of the financial statement and a copy of the auditor's report.

(2) A shareholder of a corporation that is not offering its <sup>Financial statement, on demand</sup> securities to the public is entitled to be furnished by the corporation on demand with a copy of the documents mentioned in subsection 1. R.S.O. 1960, c. 71, s. 93, *amended.*

**185.**—(1) A corporation that is offering its securities to <sup>Comparative interim financial statement</sup> the public shall send to each shareholder a copy of a comparative interim financial statement for the six-month period that commenced on the date of incorporation or, if the corporation has completed a financial year, for the six-month period that commenced immediately after the end of the last completed financial year and for the comparable six-month period, if any, in the twelve months immediately preceding the commencement of the six-month period in respect of which such interim financial statement is issued, made up of,

- (a) in the case of a corporation that is a mutual fund company or investment company as defined in the regulations under *The Securities Act, 1966*, a state- <sup>1966, c. 142</sup>ment of changes in net assets for each period that complies with section 175;
- (b) in the case of a corporation other than one referred to in clause *a*, a statement of source and application of funds for each period that complies with section 176; and

(c) sufficient relevant financial information in summary form to present fairly the results of the operations of the corporation for each period, including,

- (i) a statement of sales or gross operating revenue,
- (ii) extraordinary items of income or expense,
- (iii) net income before taxes on income imposed by any taxing authority,
- (iv) taxes on income imposed by any taxing authority, and
- (v) net profit or loss. 1966, c. 28, s. 13, *part, amended.*

Variation  
of period

(2) Upon the application of any interested person, the Commission may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order upon such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part a corporation from the requirements of subsection 1 or permitting the comparative interim financial statement of a corporation to be for such period other than six months that is specified in the order. *New.*

Idem

(3) There shall be stated by way of note to the interim financial statement required by subsection 1 particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of such statement with the statement for the preceding period or with the interim financial statement for a part of the preceding period, and the effect, if material, of any such change upon the profit or loss for the period covered by the interim financial statement.

Idem

(4) For the purpose of subsection 3, a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period or part thereof, even though such change did not have a material effect upon the profit or loss for the period covered by the interim financial statement.

Idem

(5) The interim financial statement required by subsection 1 shall be sent by prepaid mail to each shareholder, within sixty days of the date to which it is made up, at his latest address as shown on the records of the corporation. 1966, c. 28, s. 13, *part, amended.*



## INVESTIGATIONS

**186.**—(1) Upon application by a shareholder of a corporation, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the corporation or the holders of its securities to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as to the court seems fit, appointing an inspector to investigate the affairs and management of the corporation or any affiliate of the corporation, or both, and to audit the accounts and records of the corporation or any affiliate thereof named in the order. R.S.O. 1960, c. 71, s. 321 (1), *amended*. Investigations and audits

(2) An order may be made under subsection 1 whether or not there has been disclosure to the shareholders of the corporation of information relating to any matter on the basis of which the order is made. *New*. Idem

(3) Every director, officer, agent, employee, banker and auditor of the corporation or of any affiliate of the corporation named in the order and every other person shall produce for the examination of the inspector all accounts and records of or relating to the corporation or affiliate in their custody or control. Production of accounts and records

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the corporation or affiliate in relation to its affairs, management, accounts and records. R.S.O. 1960, c. 71, s. 321 (7, 8), *amended*. Examination may be upon oath

(5) The court may, on the application of the inspector, on such terms and conditions as it sees fit, order any person not mentioned in subsection 4 to attend and be examined under oath before the inspector on any matter relevant to the investigation or audit. *New*. Court order for examination

(6) Every director, officer, agent or employee who refuses to produce any account or record referred to in subsection 3 and every banker or auditor who refuses to produce any account or record referred to in subsection 4 and every person examined under subsection 5 who refuses to answer any question related to the affairs and management of the corporation or any affiliate is guilty of an offence under section 259, in addition to any other liability to which he is subject. R.S.O. 1960, c. 71, s. 321 (9), *amended*. Offences

(7) The inspector shall make a report to the court and shall forward a copy of the report to the corporation and any affiliate of the corporation named in the order and to the person who made the application under subsection 1. *New*. Inspector's report

Corporation  
may appoint  
inspector  
for same  
purpose

**187.**—(1) A corporation may, by resolution passed at an annual meeting of shareholders or a general meeting of shareholders called for that purpose, appoint an inspector to investigate its affairs and management.

Powers  
and  
duties of  
inspector

(2) The inspector appointed under subsection 1 has the same powers and shall perform the same duties as an inspector appointed under section 186 and he shall make his report in such manner and to such persons as the corporation by resolution of the shareholders directs. R.S.O. 1960, c. 71, s. 321 (5, 6), *amended*.

Report  
admissible  
in  
proceedings

**188.** A copy of the report of the inspector authenticated by the court or in the case of an investigation under section 173 by the inspector is admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report. R.S.O. 1960, c. 71, s. 321 (10), *amended*.

#### REORGANIZATION

##### *Amendment of Articles*

Amend-  
ments

**189.**—(1) A corporation may, from time to time, amend its articles of incorporation to,

- (a) change its name;
- (b) change the period of its duration;
- (c) extend, limit or otherwise vary its objects;
- (d) increase its authorized capital;
- (e) decrease,
  - (i) its authorized capital by cancelling shares, whether issued or unissued and whether with par value or without par value, or by reducing the par value of issued or unissued shares, or
  - (ii) its issued capital, if it has shares without par value,

and, where it has more capital than it requires, to authorize the repayment of capital to the shareholders to the extent that the issued capital is decreased in any way under this clause;

- (f) redivide its authorized capital into shares of lesser or greater par value;
- (g) consolidate or subdivide any of its shares without par value;
- (h) change any of its shares with par value into shares without par value;
- (i) change any of its shares without par value into shares with par value;
- (j) redesignate any class of shares;
- (k) reclassify any shares with or without par value into shares of a different class;
- (l) delete or vary any provision in its articles;
- (m) provide for any other matter or thing that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the corporation;
- (n) provide for restrictions on the transfer of the shares or any class thereof.

(2) An amendment under clauses *a* to *m* of subsection 1 shall be authorized by a special resolution. 1 Authorization

(3) An amendment under clause *n* of subsection 1 shall be authorized by a resolution of the board of directors and confirmed in writing, Idem

(a) by 100 per cent of the shareholders; or

(b) by at least 95 per cent of the shareholders holding at least 95 per cent of the issued capital,

but, in the case of confirmation under clause *b*, the resolution is not effective until twenty-one days notice of the resolution has been given by sending the notice to each shareholder to his latest address as shown on the records of the corporation and only if at the expiration of the twenty-one days none of the shareholders has dissented in writing to the corporation.

(4) If the amendment is to delete or vary a preference, right, condition, restriction, limitation or prohibition attaching to a class of special shares or to create special shares ranking in any respect in priority to or on a parity with an Additional authorization for variation of rights of special shareholders

existing class of special shares, then, in addition to the confirmation required by subsection 2, the resolution is not effective until it has been confirmed,

- (a) by 100 per cent of the holders of the shares of such class or classes of shares in writing; or
- (b) in writing by at least 95 per cent of the holders of the shares of such class or classes of shares holding at least 95 per cent of the issued shares of such class or classes and after twenty-one days notice of the resolution and confirmation has been given by sending the notice to each of the holders of shares of such class or classes to his latest address as shown on the records of the corporation and only if at the expiration of twenty-one days none of the holders of such class or classes has dissented in writing to the corporation; or
- (c) if the articles so provide, by at least two-thirds of the votes cast at a meeting of the holders of such class or classes of shares duly called for that purpose or such greater proportion of the votes cast as the articles provide,

and by such additional authorization as the articles provide. R.S.O. 1960, c. 71, s. 33 (1-5), *amended*.

#### Exception

(5) Where an amendment to the articles that could be made under this section is made as part of an arrangement under sections 193, 194 and 195, the procedure provided for in those sections and not the procedure provided for in this section applies to the amendment.

#### Special Act corporations excepted

(6) This section does not apply to a corporation incorporated by special Act, except that a corporation incorporated by special Act may under this section amend its articles to change its name. R.S.O. 1960, c. 71, s. 33 (8, 9), *amended*.

#### Articles of amendment

**190.**—(1) For the purpose of bringing an amendment to the articles into effect, the corporation shall deliver to the Minister, within six months after the resolution has become effective, articles of amendment in duplicate, executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the articles of amendment, setting out,

- (a) the name of the corporation;



- (b) a certified copy of the resolution;
- (c) that the amendment has been duly authorized as required by subsections 2, 3 and 4 of section 189; and
- (d) the date of the confirmation of the resolution by the shareholders. R.R.O. 1960, Reg. 61, s. 35, *amended*.

(2) Where the articles of amendment are to change the <sup>Change of name</sup> name of the corporation, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the corporation is not insolvent. R.R.O. 1960, Reg. 60, s. 4 (3), *amended*.

(3) Where the articles of amendment are to decrease the <sup>Decrease of capital</sup> authorized or issued capital, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the corporation is not insolvent and that the decrease will not render the corporation insolvent, and, if required by the Minister, by evidence that establishes to his satisfaction that no creditors object to the amendment. R.S.O. 1960, c. 71, s. 34.

(4) Where the articles of amendment are to make any <sup>Pro forma balance sheet</sup> change in the authorized or issued capital, the articles of amendment shall, if required by the Minister, be accompanied by a *pro forma* balance sheet after giving effect to the proposed change. R.R.O. 1960, Reg. 60, s. 4 (1) (d), *amended*.

**191.**—(1) If the articles of amendment conform to law, <sup>Certificate of amendment</sup> the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles of amendment the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of amendment to which he shall affix the other duplicate. *New*.

(2) The amendment becomes effective upon the date set <sup>Effect of certificate</sup> forth in the certificate of amendment and the articles of incorporation are amended accordingly. R.S.O. 1960, c. 71, s. 4, *amended*.

### *Restatement of Articles*

**192.**—(1) A corporation may at any time restate its <sup>Restatement of articles</sup> articles of incorporation as theretofore amended.

Filing of  
restatement

(2) For the purposes of bringing the restated articles into effect, the corporation shall deliver to the Minister the restated articles in duplicate, executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the restated articles, setting out,

- (a) all the provisions that are then set out in the original articles of incorporation as theretofore amended; and
- (b) a statement that the restated articles correctly set out without change the corresponding provisions of the original articles as theretofore amended.

Restatement  
of  
certificate

(3) If the restated articles of incorporation conform to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the restated articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a restated certificate of incorporation to which he shall affix the other duplicate.

Effect of  
certificate

(4) The restated articles of incorporation become effective upon the date set forth in the restated certificate and supersede the original articles of incorporation and all amendments thereto. *New.*

### *Arrangements*

Interpre-  
tation

**193.**—(1) In this section and sections 194 and 195, "arrangement" includes a reorganization of the authorized capital of a corporation and also includes,

- (a) the consolidation of shares of different classes;
- (b) the reclassification of shares of one class into shares of another class;
- (c) the variation of the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares of any class; and
- (d) a reconstruction under which a corporation transfers or sells, or proposes to transfer or to sell, to another body corporate the whole or a substantial part of its

undertaking for a consideration consisting in whole or in part of securities of the other body corporate and under which it proposes to distribute a part of that consideration among its shareholders of any class, or to cease carrying on its undertaking or that part of its undertaking so transferred or sold or so proposed to be transferred or sold. R.S.O. 1960, c. 71, s. 95 (1).

(2) Subject to section 195, a corporation may make an <sup>Arrangement</sup> arrangement,

(a) that affects the rights of all its shareholders; or

(b) that affects the rights of only holders of a particular class of its shares. R.S.O. 1960, c. 71, s. 95 (2), *amended*.

(3) Where a corporation proposing an arrangement has <sup>Subsidiaries</sup> one or more subsidiaries, any one or more of the subsidiaries may join in the arrangement with the holding corporation in one scheme. *New*.

**194.**—(1) A corporation proposing an arrangement shall <sup>Scheme of arrangement</sup> prepare a scheme for the purpose, prescribing in detail what is to be done and the manner in which it is to be effected.

(2) The corporation shall submit the scheme to the share-<sup>Submission to share-holders</sup> holders, or to the class of them affected, as the case may be, at a meeting duly called by the corporation for the purpose of considering the scheme. *New*.

(3) Where a meeting of the shareholders or of any class or classes of shareholders is called under subsection 2, the notice calling the meeting shall contain a statement explaining the effect of the arrangement and in particular stating any interest of the directors of the corporation, whether as directors or as shareholders of the corporation or otherwise, and the effect thereon of the arrangement in so far as it is different from the effect on the like interest of other persons. R.S.O. 1960, c. 71, s. 95 (3).

(4) If the shareholders of the corporation or of the class <sup>Approval by share-holders</sup> or classes affected, as the case may be, present in person or by proxy at the meeting, agree, by a vote of at least three-fourths of the shares of each class represented, to the arrangement either as proposed or as varied at the meeting, the scheme shall be deemed to have been adopted. R.S.O. 1960, c. 71, s. 95 (4), *amended*.

Approval  
by court

(5) Where the scheme is deemed to have been adopted, the corporation may apply to the court for an order approving the scheme.

Notice

(6) The corporation shall notify the Minister and unless the court otherwise directs, each of its dissentient shareholders, in such manner as the court may direct, of the time and place when the application for the approving order will be made.

Counsel

(7) The Minister may appoint counsel to assist the court upon the hearing of an application under this section. *New.*

Order

(8) The court shall hear and determine the matter and may approve the scheme as presented or may approve it, subject to compliance with such terms and conditions as it thinks fit, having regard to the rights and interests of the dissentient shareholders, or any of them. R.S.O. 1960, c. 71, s. 95 (4, 5), *amended.*

Filing of  
statement  
to amend  
articles

**195.**—(1) For the purpose of bringing a scheme into effect, the corporation shall, within six months of the approval of the scheme by the court, deliver to the Minister a statement in duplicate executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation, and verified by affidavit of one of the officers or directors signing the statement, setting out,

- (a) the name of the corporation;
- (b) a certified copy of the scheme;
- (c) a certified copy of the order of the court; and
- (d) that the terms and conditions, if any, to which the scheme is made subject by the order have been complied with.

Issuance of  
certificate  
of  
amendment

(2) If the statement conforms to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the statement the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of the filing to which he shall affix the other duplicate.



(3) Upon the issuance of the certificate of filing, the scheme becomes effective and constitutes an amendment to the articles. *New.* Effect of  
certificate  
of  
amendment

### *Amalgamations and Continuations*

**196.**—(1) Any two or more corporations, including holding or subsidiary corporations, may amalgamate and continue as one corporation. Amalga-  
mation

(2) The corporations proposing to amalgamate shall enter into an agreement for the amalgamation, prescribing its terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect, and, in particular the agreement shall set out, Agreement

- (a) the name of the amalgamated corporation;
- (b) the period of duration of the amalgamated corporation if other than perpetual;
- (c) the place in Ontario where the head office of the amalgamated corporation is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district, and giving the street and number, if any;
- (d) the authorized capital of the amalgamated corporation, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share, or, where the shares are to be without par value, the consideration, if any, exceeding which each share may not be issued or the aggregate consideration, if any, exceeding which all the shares of each class may not be issued;
- (e) where there are to be special shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions applying to them or each class of them;
- (f) the restrictions, if any, to be placed on the transfer of its shares, or any class thereof;
- (g) the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the amalgamated corporation;

- (h) the time and manner of election of the subsequent directors of the amalgamated corporation;
- (i) whether or not the by-laws of the amalgamated corporation are to be those of one of the amalgamating corporations, and, if not, a copy of the proposed by-laws of the amalgamated corporation;
- (j) the manner in which the issued shares of each of the amalgamating corporations are to be converted into issued shares of the amalgamated corporation;
- (k) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation. R.S.O. 1960, c. 71, s. 96 (1, 2), *amended*.

Shares of  
amalgamating  
corporation  
held by  
another

(3) Where shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement shall provide for the cancellation of such shares upon the amalgamation becoming effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated corporation. *New*.

Approval of  
agreement

(4) An amalgamation agreement is not effective until approved by a special resolution of each of the amalgamating corporations. R.S.O. 1960, c. 71, s. 96 (3), *amended*.

Approval  
by special  
shareholders

(5) Where the carrying out of the amalgamation agreement would result in the deletion or variation of a preference, right, condition, restriction, limitation or prohibition attaching to a class of issued special shares of any of the amalgamating corporations or in the creation of special shares of the amalgamated corporation ranking in any respect in priority to, or on a parity with, any existing class of special shares of any of the amalgamating corporations, the agreement is not effective until it is approved in the manner provided by subsection 4 of section 189 in addition to the approval required by subsection 4. *New*.

Filing of  
articles of  
amalgamation

**197.**—(1) For the purpose of bringing an amalgamation into effect, the amalgamating corporations shall, within six months after the amalgamation agreement has become effective, deliver to the Minister articles of amalgamation in duplicate executed under the seal of each of the amalgamating corporations and signed by two officers, or by one director and one officer, of each of the amalgamating corporations and verified by affidavit of one of the officers or directors signing the articles of amalgamation for each amalgamating corporation, setting out,

- (a) the names of each of the amalgamating corporations;
- (b) a certified copy of the amalgamation agreement;
- (c) that the agreement has been duly approved as required by section 196; and
- (d) the dates on which the amalgamation agreement was approved by the shareholders of each of the amalgamating corporations.

(2) The articles of amalgamation shall be accompanied by evidence that establishes to the satisfaction of the Minister that each of the amalgamating corporations is not insolvent and, if required by the Minister, a *pro forma* balance sheet after giving effect to the proposed amalgamation. Evidence of solvency

(3) If the articles of amalgamation conform to law, the Minister shall, when all prescribed fees have been paid, Issuance of certificate of amalgamation

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;

- (b) file one of the duplicates in his office; and

- (c) issue to the amalgamated corporation or its agent a certificate of amalgamation to which he shall affix the other duplicate. *New.*

(4) Upon the date set forth in the certificate of amalgamation, Effect of certificate

- (a) the amalgamation becomes effective and the amalgamating corporations are amalgamated and continue as one corporation under the terms and conditions prescribed in the amalgamation agreement;
- (b) the amalgamated corporation possesses all the property, rights, privileges and franchises and is subject to all liabilities, contracts, disabilities and debts of each of the amalgamating corporations;
- (c) the issued capital of the amalgamated corporation is, subject to the decrease provided for in subsection 3 of section 196, equal to the aggregate of the issued capital of each of the amalgamating corporations immediately before the amalgamation becomes effective; and

- (d) the articles of incorporation of each of the amalgamated corporations are amended to the extent necessary to give effect to the terms and conditions of the amalgamation agreement. R.S.O. 1960, c. 71, s. 96 (4), *amended*.

Certificate  
of con-  
tinuation

**198.**—(1) A corporation incorporated under the laws of any jurisdiction other than Ontario may, if it appears to the Minister to be thereunto authorized by the laws of the jurisdiction in which it was incorporated, apply to the Minister for a certificate continuing it as if it has been incorporated under this Act, and the Minister may issue the certificate of continuation on application supported by such material as appears satisfactory, and the certificate may be issued on such terms and subject to such limitations and conditions and contain such provisions as appear to the Minister to be fit and proper. R.S.O. 1960, c. 71, s. 323 (3), *amended*.

Effect of  
certificate  
of con-  
tinuation

(2) Upon the date set forth in a certificate of continuation issued under subsection 1, this Act applies to the corporation to the same extent as if it had been incorporated under this Act. *New*.

Transfer of  
Ontario  
corporations

**199.**—(1) A corporation incorporated under the laws of Ontario may, if authorized by a special resolution, by the Minister and by the laws of any other jurisdiction, apply to the proper officer of that other jurisdiction for an instrument of continuation continuing the corporation as if it had been incorporated under the laws of that other jurisdiction.

Notice

(2) The corporation shall file with the Minister a notice of the issue of the instrument of continuation, and on and after the date of the filing of the notice this Act ceases to apply to that corporation.

Application

(3) This section applies only in respect of a jurisdiction that has legislation in force that permits corporations incorporated under its laws to apply for an instrument of continuation under the laws of Ontario. 1961-62, c. 21, s. 4, *amended*.

Rights of  
creditors  
preserved

**200.** All rights of creditors against the property, rights and assets of a corporation amalgamated under section 196 or continued under section 198 and all liens upon its property, rights and assets are unimpaired by such amalgamation or continuation, and all debts, contracts, liabilities and duties of the corporation thenceforth attach to the amalgamated or continued corporation and may be enforced against it. R.S.O. 1960, c. 71, s. 324.



## DISSOLUTION

*Winding Up*

**201.** In sections 203 to 246, "contributory" means a person who is liable to contribute to the property of a corporation in the event of the corporation being wound up under this Act. R.S.O. 1960, c. 71, s. 241. Interpretation

*Voluntary Winding Up*

**202.** Sections 203 to 215 apply to corporations being wound up voluntarily. *New.* Application of ss. 203-215

**203.**—(1) Where the shareholders of a corporation by a majority of the votes cast at a general meeting duly called for that purpose, or by such greater proportion of the votes cast as the articles provide, pass a resolution requiring the corporation to be wound up, the corporation may be wound up voluntarily. Voluntary winding up

(2) At such meeting the shareholders shall appoint one or more persons, who may be directors, officers or employees of the corporation, as liquidator of the estate and effects of the corporation for the purpose of winding up its affairs and distributing its property, and may at that or any subsequent general meeting fix his remuneration and the costs, charges and expenses of the winding up. R.S.O. 1960, c. 71, s. 243, *amended.* Appointment of liquidator

(3) On the application of any shareholder or creditor of the corporation or of the liquidator, the court may review the remuneration of the liquidator and, whether or not the remuneration has been fixed by resolution, the court may fix and determine the remuneration at such amount as it thinks proper. *New.* Review of remuneration by court

(4) A corporation shall file notice of a resolution requiring the voluntary winding up of a corporation with the Minister within ten days after the resolution has been passed and shall publish the notice in *The Ontario Gazette* within twenty days after the resolution has been passed. R.S.O. 1960, c. 71, s. 244 (1), *amended.* Publication of notice of winding up

**204.** A corporation being wound up voluntarily may, in general meeting, by resolution, delegate to any committee of its shareholders, contributories or creditors, hereinafter referred to as inspectors, the power of appointing the liquidator and filling any vacancy in the office of liquidator, or may by a like resolution enter into any arrangement with its creditors with respect to the powers to be exercised by the liquidator and the manner in which they are to be exercised. R.S.O. 1960, c. 71, s. 245. Inspectors

Vacancy in  
office of  
liquidator

**205.** If a vacancy occurs in the office of liquidator by death, resignation or otherwise, the shareholders in general meeting may, subject to any arrangement the corporation may have entered into with its creditors upon the appointment of inspectors, fill such vacancy, and a general meeting for that purpose may be called by the continuing liquidator, if any, or by any shareholder or contributory, and shall be deemed to have been duly held if called in the manner prescribed by the articles or by-laws of the corporation, or, in default thereof, in the manner prescribed by this Act, for calling general meetings of the shareholders of the corporation. R.S.O. 1960, c. 71, s. 246, *amended*.

Removal of  
liquidator

**206.** The shareholders of the corporation may by a majority of the votes cast at a general meeting called for that purpose remove a liquidator appointed under section 203, 204 or 205, and in such case shall appoint another liquidator in his stead. R.S.O. 1960, c. 71, s. 247.

Commence-  
ment of  
winding up

**207.** A voluntary winding up commences at the time of the passing of the resolution requiring the winding up. R.S.O. 1960, c. 71, s. 248.

Corporation  
to cease  
business

**208.** A corporation being wound up voluntarily shall, from the commencement of its winding up, cease to carry on its undertaking, except in so far as may be required as beneficial for the winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidator, or alterations in the status of the shareholders of the corporation, taking place after the commencement of its winding up are void, but its corporate existence and all its corporate powers, notwithstanding that it is otherwise provided by its articles or by-laws, continue until its affairs are wound up. R.S.O. 1960, c. 71, s. 249, *amended*.

No proceed-  
ings against  
corporation  
after  
voluntary  
winding up  
except  
by leave

**209.** After the commencement of a voluntary winding up,

- (a) no action or other proceeding shall be commenced against the corporation; and
- (b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court imposes. R.S.O. 1960, c. 71, s. 250.

List of  
contribu-  
tories  
and calls

**210.—(1)** Upon a voluntary winding up, the liquidator,

- (a) shall settle the list of contributories;

- (b) may, before he has ascertained the sufficiency of the property of the corporation, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay any sum that he considers necessary for satisfying the liabilities of the corporation and the costs, charges and expenses of winding up and for adjusting the rights of the contributories among themselves.

(2) A list settled by the liquidator under clause *a* of sub-section 1 is *prima facie* proof of the liability of the persons named therein to be contributories. List  
prima facie  
proof

(3) The liquidator in making a call under clause *b* of sub-section 1 may take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the call. R.S.O. 1960, c. 71, s. 251. Default  
on calls

**211.**—(1) The liquidator may, during the continuance of the voluntary winding up, call general meetings of the shareholders of the corporation for the purpose of obtaining their approval by resolution, or for any other purpose he thinks fit. Meetings of  
corporation  
during  
winding up

(2) Where a voluntary winding up continues for more than one year, the liquidator shall call a general meeting of the shareholders of the corporation at the end of the first year and of each succeeding year from the commencement of the winding up, and he shall lay before the meeting an account showing his acts and dealings and the manner in which the winding up has been conducted during the immediately preceding year. R.S.O. 1960, c. 71, s. 252, *amended*. Where  
winding up  
continues  
more than  
one year

**212.** The liquidator, with the approval of a resolution of the shareholders of the corporation passed in general meeting or with the approval of the inspectors, may make such compromise or other arrangement as the liquidator thinks expedient with any creditor or person claiming to be a creditor or having or alleging that he has a claim, present or future, certain or contingent, liquidated or unliquidated, against the corporation or whereby the corporation may be rendered liable. R.S.O. 1960, c. 71, s. 253, *amended*. Arrange-  
ments  
with  
creditors

**213.** The liquidator may, with the approval referred to in section 212, compromise all debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the corporation and any contributory, alleged contributory or other debtor or person who may be liable to the corporation and all questions in any way relating to or affecting the property of the corporation, Power to  
compromise  
with  
debtors  
and con-  
tributories



or the winding up of the corporation, upon the receipt of such sums payable at such times and generally upon such terms as are agreed, and the liquidator may take any security for the discharge of such debts or liabilities and give a complete discharge in respect thereof. R.S.O. 1960, c. 71, s. 254, *amended*.

Power to  
accept  
shares,  
etc., as  
considera-  
tion for  
sale of  
property to  
another  
body  
corporate

**214.**—(1) Where a corporation is proposed to be or is in the course of being wound up voluntarily and it is proposed to transfer the whole or a portion of its business or property to another body corporate, referred to in this subsection as the purchasing corporation, the liquidator of the first-mentioned corporation, with the approval of a resolution of the shareholders passed in general meeting of the corporation conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, may receive, in compensation or in part-compensation for the transfer, cash or shares or other like interest in the purchasing corporation or any other body corporate for the purpose of distribution among the creditors or shareholders of the corporation that is being wound up in the manner set forth in the arrangement, or may, in lieu of receiving cash or shares or other like interest, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing corporation or any other body corporate.

Confirma-  
tion of  
sale or  
arrange-  
ment

(2) A transfer made or arrangement entered into by the liquidator under this section is not binding on the shareholders of the corporation that is being wound up unless the shareholders or classes of shareholders, as the case may be, at a general meeting duly called for the purpose, by votes representing at least three-fourths of the shares or of each class of shares represented at the meeting, approve the transfer or arrangement and unless the transfer or arrangement is approved by an order made by the court on the application of the corporation.

Where  
resolution  
not invalid

(3) No resolution is invalid for the purposes of this section because it was passed before or concurrently with a resolution for winding up the corporation or for appointing the liquidator. R.S.O. 1960, c. 71, s. 255, *amended*.

Account of  
voluntary  
winding up  
to be  
made by  
liquidator  
to a  
general  
meeting

**215.**—(1) The liquidator shall make up an account showing the manner in which the winding up has been conducted and the property of the corporation disposed of, and thereupon shall call a general meeting of the shareholders of the corporation for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator, and the meeting shall be called in the manner



prescribed by the articles or by-laws or, in default thereof, in the manner prescribed by this Act for the calling of general meetings of shareholders.

(2) The liquidator shall within ten days after the holding of the meeting file a notice with the Minister stating that the meeting was held and the date thereof. Notice of holding of meeting

(3) Subject to subsection 4, on the expiration of three months from the date of the filing of the notice the corporation is dissolved. Dissolution

(4) At any time during the three-month period mentioned in subsection 3, the court may, on the application of the liquidator or any other person interested, make an order deferring the date on which the dissolution of the corporation is to take effect to a date fixed in the order, and in such event the corporation is dissolved on the date so fixed. R.S.O. 1960, c. 71, s. 279 (1-4), *amended*. Extension

(5) Notwithstanding anything in this Act, the court at any time after the affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order. R.S.O. 1960, c. 71, s. 280 (1), *amended*. Dissolution by court order

(6) The person on whose application an order was made under subsection 4 or 5 shall within ten days after it was made file with the Minister a certified copy of the order. R.S.O. 1960, c. 71, s. 279 (5), *amended*. Copy of extension order to be filed

### *Winding up by Court Order*

**216.** Sections 217 to 228 apply to corporations being wound up by order of the court. *New.* Application of ss. 217-228

**217.** A corporation may be wound up by order of the court, Winding up by court

(a) where the shareholders by a majority of the votes cast at a general meeting called for that purpose or by such greater proportion of the votes cast as the articles provide pass a resolution authorizing an application to be made to the court to wind up the corporation;

(b) where proceedings have been begun to wind up voluntarily and it appears to the court that it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court;

(c) where it is proved to the satisfaction of the court that the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its business and that it is advisable to wind it up; or

(d) where in the opinion of the court it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up. R.S.O. 1960, c. 71, s. 256, *amended*.

Who may  
apply

**218.**—(1) A winding-up order may be made upon the application of the corporation or of a shareholder or, where the corporation is being wound up voluntarily, of the liquidator or of a contributory or of a creditor having a claim of \$1,000 or more.

Notice

(2) Except where the application is made by the corporation, four days notice of the application shall be given to the corporation before the making of the application. R.S.O. 1960, c. 71, s. 257, *amended*.

Power  
of court

**219.** The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as is deemed just, and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise such powers of the court as are necessary for the reference. R.S.O. 1960, c. 71, s. 258, *amended*.

Appoint-  
ment of  
liquidator

**220.**—(1) The court in making the winding-up order may appoint one or more persons as liquidator of the estate and effects of the corporation for the purpose of winding up its affairs and distributing its property.

Remunera-  
tion

(2) The court may at any time fix the remuneration of the liquidator.

Vacancy

(3) If a liquidator appointed by the court dies or resigns or the office becomes vacant for any reason, the court may by order fill the vacancy. R.S.O. 1960, c. 71, s. 259 (1-3).

Notice of  
appoint-  
ment

(4) A liquidator appointed by the court under this section shall forthwith give to the Minister notice in writing of his appointment and shall, within twenty days of his appointment, publish the notice in *The Ontario Gazette*. *New*.

Removal of  
liquidator

**221.** The court may by order remove for cause a liquidator appointed by it, and in such case shall appoint another liquidator in his stead. R.S.O. 1960, c. 71, s. 259 (4).

**222.** The costs, charges and expenses of a winding up by order of the court shall be taxed by a taxing officer of the Supreme Court at Toronto. R.S.O. 1960, c. 71, s. 260. Costs and expenses

**223.** Where a winding-up order is made by the court without prior voluntary winding-up proceedings, the winding up shall be deemed to commence at the time of the service of notice of the application, and, where the application is made by the corporation, at the time the application is made. R.S.O. 1960, c. 71, s. 261. Commencement of winding up

**224.** Where a winding-up order has been made by the court, proceedings for the winding up of the corporation shall be taken in the same manner and with the like consequences as provided for a voluntary winding up, except that the list of contributories shall be settled by the court unless it has been settled by the liquidator before the winding-up order, in which case the list is subject to review by the court, and except that all proceedings in the winding up are subject to the order and direction of the court. R.S.O. 1960, c. 71, s. 262. Proceedings in winding up after order

**225.**—(1) Where a winding-up order has been made by the court, the court may direct meetings of the shareholders of the corporation to be called, held and conducted in such manner as the court thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of it to the court. Meetings of shareholders of corporation may be ordered

(2) Where a winding-up order has been made by the court, the court may require any contributory for the time being settled on the list of contributories, or any director, officer, employee, trustee, receiver, banker or agent of the corporation to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any sum or balance, documents, records, estate or effects that are in his hands and to which the corporation is *prima facie* entitled. Order for delivery by contributories and others of property, etc.

(3) Where a winding-up order has been made by the court, the court may make an order for the inspection of the documents and records of the corporation by its creditors and contributories, and any documents and records in the possession of the corporation may be inspected in conformity with the order. R.S.O. 1960, c. 71, s. 263, *amended*. Inspection of documents and records

**226.** After the commencement of a winding up by order of the court, Proceedings against corporation after court winding up

- (a) no action or other proceeding shall be proceeded with or commenced against the corporation; and

- (b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court imposes. R.S.O. 1960, c. 71, s. 264.

Provision  
for dis-  
charge of  
liquidator  
and distri-  
bution by  
the court

**227.**—(1) Where the realization and distribution of the property of a corporation being wound up under an order of the court has proceeded so far that in the opinion of the court it is expedient that the liquidator should be discharged and that the property of the corporation remaining in his hands can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to such officer or person as the court directs, of such property, and it shall be realized and distributed by or under the direction of the court among the persons entitled thereto in the same way as nearly as may be as if the distribution were being made by the liquidator.

Disposal of  
documents  
and  
records

(2) In such case, the court may make an order directing how the documents and records of the corporation and of the liquidator are to be disposed of, and may order that they be deposited in court or otherwise dealt with as the court thinks fit. R.S.O. 1960, c. 71, s. 283, *amended*.

Order for  
dissolution

**228.**—(1) The court at any time after the affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order.

Copy of  
dissolution  
order to  
be filed

(2) The person on whose application the order was made shall within ten days after it was made file with the Minister a certified copy of the order. R.S.O. 1960, c. 71, s. 280 (1, 2), *amended*.

### *Winding Up Generally*

Application  
of ss. 230-  
246

**229.** Sections 230 to 246 apply to corporations being wound up voluntarily or by order of the court. R.S.O. 1960, c. 71, s. 265.

Where no  
liquidator

**230.** Where there is no liquidator,

- (a) the court may by order on the application of a shareholder of the corporation appoint one or more persons as liquidator; and



- (b) the estate and effects of the corporation shall be under the control of the court until the appointment of a liquidator. R.S.O. 1960, c. 71, s. 266, *amended*.

**231.—**(1) Upon a winding up,

Consequences of winding up

- (a) the liquidator shall apply the property of the corporation in satisfaction of all its debts, obligations and liabilities and, subject thereto, shall distribute the property rateably among the shareholders according to their rights and interests in the corporation;
- (b) in distributing the property of the corporation, debts to employees of the corporation for services performed for it due at the commencement of the winding up or within one month before, not exceeding three months wages and for vacation pay accrued for not more than twelve months under *The Employment Standards Act, 1968* and the regulations thereunder or under a collective agreement made by the corporation, shall be paid in priority to the claims of the ordinary creditors, and such persons are entitled to rank as ordinary creditors for the residue of their claims; 1968, c. 35
- (c) all the powers of the directors cease upon the appointment of a liquidator, except in so far as the liquidator may sanction the continuance of such powers.

(2) Section 52 of *The Trustee Act* applies *mutatis mutandis* to liquidators. R.S.O. 1960, c. 71, s. 267, *amended*. Distribution of property R.S.O. 1960 c. 408

**232.** The costs, charges and expenses of a winding up, including the remuneration of the liquidator, are payable out of the property of the corporation in priority to all other claims. R.S.O. 1960, c. 71, s. 268. Payment of costs and expenses

**233.—**(1) A liquidator may,

Powers of liquidators

- (a) bring or defend any action, suit or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the corporation;
- (b) carry on the business of the corporation so far as may be required as beneficial for the winding up of the corporation;
- (c) sell the real and personal property, effects and things in action of the corporation by public auction or private sale;

- (d) do all acts and execute, in the name and on behalf of the corporation, all documents, and for that purpose use the seal of the corporation;
- (e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation;
- (f) raise upon the security of the property of the corporation any requisite money;
- (g) take out in his official name letters of administration of the estate of any deceased contributory and do in his official name any other act that is necessary for obtaining payment of any money due from a contributory or from his estate and which act cannot be done conveniently in the name of the corporation; and
- (h) do and execute all such other things as are necessary for winding up the affairs of the corporation and distributing its property.

Bills of exchange, etc., to be deemed drawn in the course of business

(2) The drawing, accepting, making or endorsing of a bill of exchange or promissory note by the liquidator on behalf of a corporation has the same effect with respect to the liability of the corporation as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of the corporation in the course of carrying on its business.

Where moneys deemed to be due to liquidator

(3) Where the liquidator takes out letters of administration or otherwise uses his official name for obtaining payment of any money due from a contributory, such money shall be deemed, for the purpose of enabling him to take out such letters or recover such money, to be due to the liquidator himself. R.S.O. 1960, c. 71, s. 269, *amended*.

Acts by more than one liquidator

**234.** Where more than one person is appointed as liquidator, any power conferred by sections 202 to 246 on a liquidator may be exercised by such one or more of such persons as may be determined by the resolution or order appointing them or, in default of such determination, by any number of them not fewer than two. *New*.

Nature of liability of contributory

**235.** The liability of a contributory creates a debt accruing due from him at the time his liability commenced, but payable at the time or respective times when calls are made for enforcing such liability. R.S.O. 1960, c. 71, s. 270.

**236.** If a contributory dies before or after he had been placed on the list of contributories, his personal representative is liable in due course of administration to contribute to the property of the corporation in discharge of the liability of the deceased contributory and shall be a contributory accordingly. R.S.O. 1960, c. 71, s. 271, *amended*.

Who liable  
in case of  
his death

**237.**—(1) The liquidator shall deposit all moneys that he has belonging to the corporation and amounting to \$100 or more in any chartered bank of Canada or in the Province of Ontario Savings Office or in any trust company or loan corporation that is registered under *The Loan and Trust Corporations Act*.

Deposit of  
moneys

R.S.O. 1960,  
c. 222

(2) If inspectors have been appointed, the depository under subsection 1 shall be one approved by them.

Approval  
of bank by  
inspectors

(3) Such deposit shall not be made in the name of the liquidator individually, but a separate deposit account shall be kept of the money belonging to the corporation in his name as liquidator of the corporation and in the name of the inspectors, if any, and such money shall be withdrawn only by order for payment signed by the liquidator and one of the inspectors, if any.

Separate  
deposit  
account  
to be kept;  
withdrawal  
from  
account

(4) At every meeting of the shareholders of the corporation the liquidator shall produce a pass-book or statement of account showing the amount of the deposits, the dates at which they were made, the amounts withdrawn and the dates of withdrawal, and mention of such production shall be made in the minutes of the meeting, and the absence of such mention is admissible in evidence as *prima facie* proof that the pass-book or statement of account was not produced at the meeting.

Liquidators  
to produce  
bank pass-  
book

(5) The liquidator shall also produce the pass-book or statement of account whenever so ordered by the court upon the application of the inspectors, if any, or of a shareholder of the corporation. R.S.O. 1960, c. 71, s. 272, *amended*.

Idem

**238.** For the purpose of proving claims, sections 25, 26 and 27 of *The Assignments and Preferences Act* apply *mutatis mutandis*, except that, where the word "judge" is used therein, the word "court" as used in this Act shall be substituted. R.S.O. 1960, c. 71, s. 273.

Proving  
claim

R.S.O. 1960,  
c. 25

**239.** Upon the application of the liquidator or of the inspectors, if any, or of any creditors, the court, after hearing such parties as it directs to be notified or after such steps as the court prescribes have been taken, may by order give its direction in any matter arising in the winding up. R.S.O. 1960, c. 71, s. 274.

Application  
for  
direction

Examination  
of persons  
as to  
estate

**240.**—(1) The court may at any time after the commencement of the winding up summon to appear before the court or liquidator any director, officer or employee of the corporation or any other person known or suspected to have in his possession any of the estate or effects of the corporation, or alleged to be indebted to it, or any person whom the court thinks capable of giving information concerning its trade, dealings, estate or effects.

Damages  
against  
delinquent  
directors,  
etc.

(2) Where in the course of the winding up it appears that a person who has taken part in the formation or promotion of the corporation or that a past or present director, officer, employee, liquidator or receiver of the corporation has misapplied or retained in his own hands, or become liable or accountable for, property of the corporation, or has committed any misfeasance or breach of trust in relation to it, the court may, on the application of the liquidator or of any creditor, shareholder or contributory, examine into the conduct of that person and order him to restore the property so misapplied or retained, or for which he has become liable or accountable, or to contribute such sum to the property of the corporation by way of compensation in respect of such misapplication, retention, misfeasance or breach of trust, or both, as the court thinks just. R.S.O. 1960, c. 71, s. 275, *amended*.

Proceedings  
by share-  
holders

**241.**—(1) Where a shareholder of the corporation desires to cause any proceeding to be taken that, in his opinion, would be for the benefit of the corporation, and the liquidator, under the authority of the shareholders or of the inspectors, if any, refuses or neglects to take such proceeding after being required so to do, the shareholder may obtain an order of the court authorizing him to take such proceeding in the name of the liquidator or corporation, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator or corporation as the court prescribes.

Benefits,  
when for  
shareholders

(2) Any benefit derived from a proceeding under subsection 1 belongs exclusively to the shareholder causing the institution of the proceeding for his benefit and that of any other shareholder who has joined him in causing the institution of the proceeding.

when for  
corporation

(3) If before the order is granted the liquidator signifies to the court his readiness to institute the proceeding for the benefit of the corporation, the court shall make an order prescribing the time within which he is to do so, and in that case the advantage derived from the proceeding, if instituted within such time, belongs to the corporation. R.S.O. 1960, c. 71, s. 276, *amended*.



**242.** The rights conferred by this Act are in addition to any other right to institute proceedings against any contributory, or against any debtor of the corporation, for the recovery of any sum due from such contributory or debtor or his estate. R.S.O. 1960, c. 71, s. 277, *amended*. Rights conferred by Act to be in addition to other powers

**243.** At any time during a winding up, the court, upon the application of a shareholder, creditor or contributory and upon proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed, may make an order staying the proceedings altogether or for a limited time on such terms and subject to such conditions as the court thinks fit. R.S.O. 1960, c. 71, s. 278. Stay of winding-up proceedings

**244.**—(1) Where the liquidator is unable to pay all the debts of the corporation because a creditor is unknown or his whereabouts is unknown, the liquidator may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and thereupon subsections 5 and 6 of section 248 apply thereto. Where creditor unknown

(2) A payment under subsection 1 shall be deemed to be in satisfaction of the debt for the purposes of winding up. R.S.O. 1960, c. 71, s. 281 (3, 4), *amended*. Idem

**245.**—(1) Where the liquidator is unable to distribute rateably the property of the corporation among the shareholders because a shareholder is unknown or his whereabouts is unknown, the share of the property of the corporation of such shareholder may, by agreement with the Public Trustee, be delivered or conveyed by the liquidator to the Public Trustee to be held in trust for the shareholder, and thereupon subsections 5 and 6 of section 248 apply thereto. Where shareholder unknown

(2) A delivery or conveyance under subsection 1 shall be deemed to be a distribution to that shareholder of his rateable share for the purposes of the winding up. R.S.O. 1960, c. 71, s. 281 (1, 2), *amended*. Idem

**246.**—(1) Where a corporation has been wound up under sections 202 to 245 and is about to be dissolved, its documents and records and those of the liquidator may be disposed of as it by resolution directs in case of voluntary winding up, or as the court directs in case of winding up under an order. Disposal of records, etc., after winding up

(2) After the expiration of five years from the date of the dissolution of the corporation, no responsibility rests on it or the liquidator, or anyone to whom the custody of the documents and records has been committed, by reason that the When responsibility as to custody of records, etc., to cease

same or any of them are not forthcoming to any person claiming to be interested therein. R.S.O. 1960, c. 71, s. 282, *amended*.

### *Other Dissolution*

Voluntary  
dissolution

**247.** A corporation may be dissolved upon the authorization of,

- (a) a majority of the votes cast at a general meeting of the shareholders of the corporation duly called for the purpose or by such greater proportion of the votes cast as the articles provide;
- (b) the consent in writing of all the shareholders entitled to vote at such meeting; or
- (c) all its incorporators or their personal representatives at any time within two years after the date of issuance of its certificate of incorporation where the corporation has not commenced business and has not issued any shares. R.S.O. 1960, c. 71, s. 327 (1) (a), *amended*.

Articles of  
dissolution  
where  
corporation  
active

**248.—**(1) For the purpose of bringing the dissolution authorized under clause *a* or *b* of section 247 into effect, the corporation shall deliver to the Minister articles of dissolution in duplicate, executed under the seal of the corporation and signed by two officers or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the articles of dissolution, setting out,

- (a) the name of the corporation;
- (b) that its dissolution has been duly authorized under clause *a* or *b* of section 247;
- (c) that it has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection 3 or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;
- (d) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute among its shareholders or that it has distributed its remaining property rateably among its shareholders according to their rights and interests in the corporation or in accordance with subsection 4 where applicable;

(e) that there are no proceedings pending in any court against it; and

(f) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office. R.S.O. 1960, c. 71, s. 327 (1), *part, amended*.

(2) For the purpose of bringing a dissolution authorized under clause c of section 247 into effect, the corporation shall deliver to the Minister articles of dissolution in duplicate, signed by all its incorporators or their personal representatives and verified by affidavit of one of them setting out,

Articles of  
dissolution  
where  
corporation  
never  
active

(a) the name of the corporation;

(b) the date of the issuance of its certificate of incorporation;

(c) that the corporation has not commenced business;

(d) that none of its shares has been issued;

(e) that dissolution has been duly authorized under clause c of section 247;

(f) that it has no debts, obligations or liabilities;

(g) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute or that it has distributed its remaining property to the persons entitled thereto;

(h) that there are no proceedings pending in any court against it; and

(i) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office. *New*.

(3) Where a corporation authorizes its dissolution and a creditor is unknown or his whereabouts is unknown, the corporation may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and such payment shall be deemed to be due provision for the debt for the purposes of clause c of subsection 1.

Where  
creditor  
unknown

Where  
shareholder  
unknown

(4) Where a corporation authorizes its dissolution and a shareholder is unknown or his whereabouts is unknown, it may, by agreement with the Public Trustee, deliver or convey his share of the property to the Public Trustee to be held in trust for him, and such delivery or conveyance shall be deemed to be a distribution to that shareholder of his rateable share for the purposes of the dissolution.

Power to  
convert

(5) If the share of the property so delivered or conveyed to the Public Trustee under subsection 4 is in a form other than cash, the Public Trustee may at any time, and within ten years after such delivery or conveyance shall, convert it into cash.

Payment  
to person  
entitled

(6) If the amount paid under subsection 3 or the share of the property delivered or conveyed under subsection 4 or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled thereto within ten years after it was so delivered, conveyed or paid, it shall be delivered, conveyed or paid to him, but, if not so claimed, it vests in the Public Trustee for the use of Ontario, and, if the person beneficially entitled thereto at any time thereafter establishes his right thereto to the satisfaction of the Lieutenant Governor in Council, an amount equal to the amount so vested in the Public Trustee shall be paid to him. R.S.O. 1960, c. 71, s. 327 (3-6), *amended*.

Certificate  
of  
dissolution

**249.**—(1) If the articles of dissolution conform to law, the Minister shall, when all prescribed fees have been paid and all taxes payable by the corporation to the Treasurer of Ontario have been paid,

- (a) endorse on each duplicate of the articles of dissolution the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of dissolution to which he shall affix the other duplicate.

Effect of  
certificate

(2) The dissolution becomes effective and the corporation is dissolved upon the date set forth in the certificate of dissolution. *New*.

Cancellation  
of certificate  
etc., by  
Minister

**250.** Where sufficient cause is shown to the Minister, he may, after he has given the corporation an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any certificate issued by him under this Act, and,



- (a) in the case of the cancellation of a certificate of incorporation, the corporation is dissolved on the date fixed in the order;
- (b) in the case of the cancellation of any other certificate, the matter that became effective upon the issuance of the certificate ceases to be in effect from the date fixed in the order. R.S.O. 1960, c. 71, s. 326 (1), *amended*.

**251.**—(1) Where a corporation is in default in filing an annual return under *The Corporations Information Act*, or a predecessor thereof, the Minister shall send notice of the default to the corporation by mail within one year after the default. Notice of default in filing returns  
R.S.O. 1960, c. 72

(2) Where a corporation is in default in filing an annual return for a period of two years, the Minister may give notice, by registered mail to the corporation or by publication once in *The Ontario Gazette*, that an order dissolving the corporation will be issued unless the corporation files the annual return within one year after the giving of the notice. Notice of default in filing returns

(3) Upon default in compliance with the notice given under subsection 2, the Minister may by order cancel the certificate of incorporation and, subject to subsection 4, the corporation is dissolved on the date fixed in the order. Dissolution for default

(4) Where a corporation is dissolved under subsection 3, the Minister, on the application of any interested person immediately before the dissolution, made within two years after the date of dissolution, may in his discretion by order, on such terms and conditions as he sees fit to impose, revive the corporation, and thereupon the corporation, subject to the terms and conditions of the order and to any rights acquired by any person after its dissolution, is restored to its legal position, including all its property, rights, privileges and franchises, and is subject to all its liabilities, contracts, disabilities and debts, as at the date of its dissolution, in the same manner and to the same extent as if it had not been dissolved. R.S.O. 1960, c. 71, s. 326 (2,3); 1964, c. 10, s. 8, *amended*. Revival

**252.**—(1) Notwithstanding the dissolution of a corporation under section 249, 250 or 251 or by the expiration of the period of its duration, Suits after dissolution

- (a) any action, suit or other proceeding commenced by or against the corporation before its dissolution may be proceeded with as if the corporation had not been dissolved;

(b) any action, suit or other proceeding may be brought against the corporation within two years after its dissolution as if the corporation had not been dissolved; and

(c) any property that would have been available to satisfy any judgment, order or other decision if the corporation had not been dissolved remains available for such purpose. 1962-63, c. 24, s. 12, *amended*.

Service  
after  
dissolution

(2) For the purposes of this section, the service of any process on a corporation after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Department as being a director or officer of the corporation before the dissolution. *New*.

Liability  
of share-  
holders to  
creditors

**253.**—(1) Notwithstanding the dissolution of a corporation, each of the shareholders among whom its property has been distributed remains liable to its creditors to the extent of the amount received by him upon the distribution, and an action in a court of competent jurisdiction to enforce such liability may be brought against him within two years from the date of the dissolution and not thereafter.

Action  
against  
one share-  
holder as  
representing  
class

(2) Where there are numerous shareholders, the court referred to in subsection 1 may permit an action to be brought against one or more shareholders as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such shareholders as are found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined. R.S.O. 1960, c. 71, s. 329, *amended*.

Forfeiture  
of un-  
disposed  
property

**254.** Subject to section 252, any real or personal property of a corporation that has not been disposed of at the date of its dissolution is forfeit to the Crown. R.S.O. 1960, c. 71, s. 330, *amended*.

#### GENERAL

Notice to  
directors  
and  
shareholders

**255.**—(1) Subject to the articles or by-laws of a corporation,

(a) a notice or other document required to be given or sent by a corporation to a shareholder or director may be delivered personally or sent by prepaid mail addressed to the shareholder or director at his latest address as shown on the records of the corporation; and

- (b) a notice or other document sent by mail by a corporation to a shareholder or director shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. R.S.O. 1960, c. 71, s. 332, *amended*.

(2) Except where otherwise provided in this Act, a notice or document required to be given or sent to a corporation may be sent to the corporation by prepaid mail at its head office as shown on the records of the Department and shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. Notice to corporation

(3) Where a notice is required by this Act to be given, the giving of the notice may be waived or the time for the notice may be waived or abridged with the consent in writing of every person entitled thereto, whether before or after the time prescribed. *New*. Waiver of notice and abridgement of times

**256.**—(1) Every person who makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omission of which makes the statement false or misleading is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1960, c. 71, s. 339 (1), *amended*. Offence, false statements

(2) No person is guilty of an offence under subsection 1 if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading. *New*. Defence

**257.**—(1) Every person who fails to file with the Minister any document required by this Act to be filed with him is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or, if such person is a body corporate, to a fine of not more than \$20,000. Offence, failure to file

(2) Where a body corporate is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000. *New*. Idem

**258.** No proceeding under section 256 or 257 shall be commenced except with the consent or under the direction of the Minister. *New*. Consent



Offence,  
general

**259.**—(1) Except where otherwise provided, every person who commits an act contrary to or fails or neglects to comply with any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or, if such person is a body corporate, to a fine of not more than \$10,000.

Idem

(2) Where a body corporate is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in the offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000. R.S.O. 1960, c. 71, s. 340, *amended*.

Limitation

**260.**—(1) No proceeding under section 256 or 257 or under section 259 for a contravention of section 161 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Minister as certified by him. R.S.O. 1960, c. 71, s. 339 (2), *amended*.

Idem

(2) No proceedings under section 259 for a contravention of section 148 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(3) Subject to subsections 1 and 2, no proceeding for an offence under this Act or the regulations shall be commenced more than one year after the time when the subject-matter of the offence arose. *New*.

Orders for  
compliance

**261.**—(1) Where a corporation or a director, officer or employee of a corporation does not comply with any provision of this Act, the articles or the by-laws of the corporation, a shareholder or a creditor of the corporation, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, may apply to the court for an order directing the corporation, director, officer or employee, as the case may be, to comply with such provision, and upon such an application the court may make such order or such other order as the court thinks fit. R.S.O. 1960, c. 71, s. 341, *amended*.

Idem

(2) Where it appears to the Commission that any person or corporation to which section 117, subsection 1 of section 118 or section 148 applies has failed to comply with or is contravening any such provision, notwithstanding the imposition of any penalty in respect of such non-compliance or contravention, the Commission may apply to the court for an order directing such person or corporation to comply with such provision or for an order restraining such person or corporation from



contravening such provision and upon such application the court may make such order or such other order as the court thinks fit. 1968-69, c. 17, s. 10, *amended*.

**262.** The Minister may delegate in writing any of his duties or powers under this Act to any public servant in the Department. R.S.O. 1960, c. 71, s. 5, *part, amended*. Powers of Minister

**263.**—(1) The Minister may require any fact relevant to the performance of his duties under this Act or the regulations to be verified by affidavit or otherwise. Proof by affidavit

(2) For the purpose of holding a hearing under this Act, the Minister may administer oaths to witnesses and require them to give evidence under oath. R.S.O. 1960, c. 71, s. 7, *amended*. Oaths at hearings

**264.** The Minister shall cause notice to be published forthwith in *The Ontario Gazette*, Publication of notices in *The Ontario Gazette*

(a) of the issue of every certificate under section 5, 8, 31, 191, 195, 197, 198 or 249;

(b) of the issue of every order under section 161, 250 or 251;

(c) of the filing of a certified copy of an order under subsection 6 of section 215 or subsection 2 of section 228; and

(d) of the filing of a notice by a liquidator under subsection 2 of section 215 or by a corporation under subsection 4 of section 203. R.S.O. 1960, c. 71, s. 10, *amended*.

**265.**—(1) Upon payment of the prescribed fee, any person is entitled to examine any document filed with or issued by the Minister under this Act, and to make extracts therefrom. Searches

(2) Upon payment of the prescribed fee, the Minister shall furnish any person with a certificate as to whether or not a document has been filed with or issued by him under this Act or any predecessor thereof or with a certified copy of any such document. *New*. Certifications by Minister

**266**—(1) Where this Act requires or authorizes the Minister to issue a certificate or certify any fact, the certificate shall be issued under the seal of the Minister and shall be signed by him or by such officer of the Department as is designated by the regulations. *New*. Execution of certificates of Minister

Certificates  
as  
evidence

(2) Any certificate purporting to be under the seal of the Minister and signed by a person authorized by or under subsection 1, or any certified copy, is receivable in evidence in any action, prosecution or other proceeding as *prima facie* proof of the facts so certified without proof of the seal or of the signature or the official position of the person appearing to have signed the certificate. R.S.O. 1960, c. 71, s. 333, *amended*.

Notice of  
refusal  
to file

**267.**—(1) Where the Minister refuses to file any articles or any other document required by this Act to be filed by him before it becomes effective, he shall give written notice to the person who delivered the articles or other document of his refusal, specifying the reasons therefor.

Failure  
to act  
deemed  
refusal

(2) Where, within six months after the delivery to the Minister of articles or other document referred to in subsection 1, the Minister has not filed or refused to file such articles or other document, he shall be deemed for the purposes of section 268 to have refused to file it. *New*.

Appeal  
from  
Minister

**268.**—(1) Any person who feels aggrieved by a decision of the Minister to,

- (a) refuse to file articles or any other document or to issue any certificate required by this Act to be filed or issued;
- (b) issue or refuse to issue a certificate of amendment under subsection 2, 3 or 4 of section 8; or
- (c) issue an order under section 250,

may appeal the decision to the Court of Appeal.

Form of  
appeal

(2) Every appeal shall be by notice of motion sent by registered mail to the Minister within thirty days after the mailing of the notice of the decision, and the practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action, provided that the Rules Committee may vary or amend such practice and procedure or may prescribe the practice and procedure that shall be applicable to appeals taken under this Act.

Certificate  
of  
Minister

(3) The Minister shall certify to the Registrar of the Supreme Court,

- (a) the decision of the Minister, together with a statement of the reasons therefor;

(b) the record of any hearing; and

(c) all written submissions to the Minister or other material that is relevant to the appeal. *New.*

(4) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. <sup>Representation</sup>  
1962-63, c. 24, s. 11, *part, amended.*

(5) Where an appeal is taken under this section, the Court of Appeal may by its order direct the Minister to make such <sup>Order of Court of Appeal</sup> decision or to do such other act as the Minister is authorized and empowered to do under this Act and as the court thinks proper, having regard to the material and submissions before it and to this Act, and the Minister shall make such decision or do such act accordingly.

(6) Notwithstanding an order of the Court of Appeal, the Minister has power to make any further decision upon new <sup>Minister may make further decision</sup> material or where there is a material change in the circumstances, and every such decision is subject to this section. *New.*

**269.**—(1) Section 5 of *The Securities Act, 1966* applies, so far as possible, to hearings of the Commission under this Act. <sup>Hearings of Commission</sup>  
1966, c. 142

(2) Any person who feels aggrieved by a decision of the Commission under this Act may appeal the decision to the <sup>Appeal from Commission</sup> Court of Appeal, and subsections 2 to 6 of section 29 of *The Securities Act, 1966* apply to the appeal. *New.*

**270.** An appeal lies to the Court of Appeal from any order made by the court under this Act. <sup>Appeal from court</sup>  
R.S.O. 1960, c. 71, s. 338.

**271.** The Lieutenant Governor in Council may make <sup>Regulations</sup> regulations respecting any matter that he considers necessary relating to the incorporation, conduct and dissolution of corporations including, without limiting the generality of the foregoing, regulations,

(a) respecting names of corporations or classes thereof, objects of corporations, authorized capital of corporations, the designation, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes of shares of corporations, or any other matter pertaining to articles or the filing thereof;

- (b) requiring the payment of fees for any matter that the Minister is required or authorized to do under this Act, and prescribing the amounts thereof;
- (c) prescribing any matter required by this Act to be prescribed by the regulations;
- (d) designating officers of the Department for the purposes of paragraph 7 of subsection 1 of section 1 and section 266;
- (e) respecting the form and content of the reports of insiders required to be filed under section 148;
- (f) respecting the form and content of information circulars required by section 118. R.S.O. 1960, c. 71, s. 335; 1966, c. 28, ss. 3, 4, *part, amended*.

Continu-  
ance of  
letters  
patent, etc.

**272.**—(1) Any provision in the letters patent, supplementary letters patent or by-laws of a corporation that was valid immediately before this Act comes into force except a by-law that contravenes section 147 continues to be valid and in effect, but any additions or amendments thereto or deletions therefrom shall be made in accordance with this Act.

Continu-  
ance re  
shares not  
fully paid  
R.S.O. 1960,  
c. 71

(2) The provisions of *The Corporations Act* relating to the liability of the holder of shares that are not fully paid and to the enforcement of such liability continue to apply in respect of shares that are not fully paid when this Act comes into force. *New*.

Commence-  
ment

**273.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

**274.** This Act may be cited as *The Business Corporations Act, 1970*.





The Business Corporations Act, 1970

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*1st Reading*

April 29th, 1970

*2nd Reading*

*3rd Reading*

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MR. LAWRENCE (Carleton East)

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

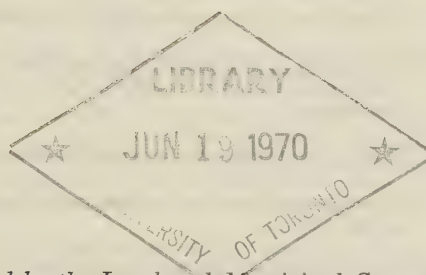
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**The Business Corporations Act, 1970**

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MR. LAWRENCE (Carleton East)

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*(Reprinted as amended by the Legal and Municipal Committee)*

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## EXPLANATORY NOTE

The purpose of this Bill is to effect a complete revision of those Parts of *The Corporations Act* relating to the incorporation, operation, management and dissolution of ordinary Ontario corporations with share capital, in the light of the recommendation in the Interim Report of the Select Committee on Company Law. The Bill does not deal with special types of corporations, such as corporations without share capital, co-operatives, insurance corporations, loan and trust corporations, credit unions, and extra-provincial corporations, the study of which remains unfinished by the Select Committee.

The principal changes are as follows:

1. Incorporation is as of right by the filing of articles of incorporation and no longer in the discretion of the Minister.
2. Incorporation to practise a profession is prohibited, unless expressly permitted by the statute governing the profession.
3. A corporation need have only one shareholder.
4. The minimum number of directors is reduced from three to one in the case of a corporation that is not offering its securities to the public.
5. The distinction between public and private companies is abolished.
6. The doctrines of *ultra vires* and constructive notice are abolished as regards third parties dealing with a corporation.
7. Provision is made for establishing liability for pre-incorporation contracts.
8. It will no longer be necessary after the first year of a corporation's existence to call and hold a meeting of directors or shareholders to pass a by-law or resolution if such by-law or resolution is consented to in writing by all the directors or shareholders, as the case may be.
9. Mutual fund shares are expressly provided for.
10. A corporation is permitted to purchase its own common shares out of surplus and to resell them, subject to the insider trading provisions.
11. Partly-paid shares can no longer be issued.
12. A code of conduct for trustees under corporate trust indentures is established.
13. Article 8 of the Uniform Commercial Code, which provides for the negotiability of corporate securities, and defines the rights and obligations of issuers, transfer agents, transferors and transferees with respect to the issue, registration and transfer of corporate securities, is adopted.
14. Provision is made for the establishment of a central clearing corporation, whereby transfers of corporate securities can be effected merely by entries on the records of such corporation, eliminating the necessity for physical delivery of the actual certificates.
15. Shareholders are given the right, with leave of the court, to bring representative actions on behalf of a corporation to enforce any right that the corporation has, when the corporation refuses to bring action to enforce such right.



16. Dissenting shareholders can require a corporation to buy them out if the corporation disposes of its undertaking, amalgamates with another corporation or undergoes other fundamental corporate changes.
17. Holders of 10 per cent of the voting shares can requisition a meeting of shareholders to pass specific by-laws, where the directors refuse to pass them.
18. The minimum period of notice of meetings of shareholders is increased from ten to twenty-one days in the case of a corporation that is offering its securities to the public.
19. Meetings of shareholders can be requisitioned by the holders of 10 per cent of the voting shares and also by the court upon the application of any shareholder.
20. A director need no longer be a shareholder, unless the by-laws otherwise provide.
21. A quorum of the directors is given the right to call a meeting of directors at any time.
22. A statutory standard of conduct for directors and officers is prescribed.
23. The liability of directors for an improper declaration of dividends is extended to the cases of an improper purchase or redemption of shares and an improper loan or guarantee to shareholders. In certain circumstances individual shareholders may also be personally liable in such cases.
24. The liability of directors for wages of employees is extended from one to two years.
25. A director can be removed from office at any time by a majority vote of the shareholders.
26. A corporation can no longer indemnify its directors or officers in respect of the cost of legal actions taken against them as a result of their breach of duty.
27. A corporation is permitted, under proper safeguards, to use electronic or other devices to maintain its records.
28. Within two years after the Act comes into force, no person can act as auditor of a corporation if he, his partner, employer or any person related to him (as defined in the Act) owns directly or indirectly any securities of the corporation or of the holding corporation of such corporation.
29. The auditor of a corporation cannot be appointed its receiver or liquidator and cannot be the trustee in bankruptcy of the estate of such corporation.
30. The percentage necessary to remove an auditor during his term of office is reduced to a majority of the votes cast at a meeting of the shareholders, from the present two-thirds vote required.
31. Where an incumbent auditor is to be removed or replaced, he has the right to make representations to the shareholders, at the expense of the corporation, concerning his proposed removal or non-reappointment, prior to the meeting of shareholders at which such action is to be taken.
32. The auditor of a holding corporation has the right to inspect the records and to question the directors, officers and employees of each subsidiary thereof.

33. Any shareholder can require the attendance of an auditor at any shareholders' meeting at the corporation's expense.
34. It will no longer be possible for a corporation that is offering its securities to the public to omit from its annual audited financial statement or from its semi-annual interim financial statement the comparative statement for the corresponding previous period or the statement of source and application of funds.
35. The right of a shareholder of a holding corporation to examine true copies of financial statements of its subsidiaries is extended from the present case where the holding corporation does not consolidate its accounts to include the case where it does.
36. A corporation that is offering its securities to the public must appoint an audit committee of its directors, of whom a majority are not to be officers of the corporation, to which the annual financial statement must be submitted for review and before which the auditor has the right, and can be summoned, to appear.
37. The present right of the holders of 10 per cent of the issued capital of a corporation to apply to the court for the appointment of an inspector to investigate the affairs and management of the corporation is now conferred upon any shareholder. The court may also order the investigation of the affairs and management of any affiliate of the corporation. The powers of the inspector are amplified.
38. Two or more corporations proposing to amalgamate cannot do so if any of them is insolvent.
39. On a voluntary winding up, the court has the power to review the remuneration of the liquidator even where it has been fixed by the shareholders.
40. The period following dissolution of a corporation within which an application for revival can be made is extended from one to two years.
41. Actions and other proceedings can be brought against a corporation within two years after its dissolution to the same extent as if it had not been dissolved.
42. The period following dissolution of a corporation within which the shareholders may be liable to the creditors is extended from one to two years.
43. The penalties are revised.
44. The present right of a shareholder or creditor to apply to the court to require a corporation or any director or officer thereof to comply with the Act is extended to cover an application for an order of compliance with any provision of the articles of incorporation or by-laws of the corporation as well.
45. Applications to the court under the Act are to be heard by a judge of the Supreme Court of Ontario designated for that purpose by the Chief Justice of the High Court.
46. All decisions of the Minister under the Act are appealable as of right to the Court of Appeal.

## The Business Corporations Act, 1970

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** In this Act,

Interpre-  
tation

1. “affiliate” means an affiliated body corporate within the meaning of subsection 4;
2. “articles of incorporation” or “articles” means the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which a corporation is incorporated, and includes any amendments thereto;
3. “associate”, where used to indicate a relationship with any person, means,
  - (i) any body corporate of which such person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the body corporate for the time being outstanding,
  - (ii) any partner of that person acting by or for the partnership of which they are both partners,
  - (iii) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity,
  - (iv) any spouse, son or daughter of that person, or
  - (v) any relative of such person or of his spouse, other than a relative referred to in subparagraph iv, who has the same home as such person.

4. "authorized capital" means the authorized capital as determined under section 24;
5. "body corporate" means any body corporate with or without share capital and whether or not it is a corporation to which this Act applies;
6. "certificate of incorporation" includes letters patent, a special Act or any other instrument by which a corporation is incorporated;
7. "certified copy" means,
  - i. in relation to a document of a corporation, a copy of the document certified to be a true copy under the seal of the corporation and signed by an officer thereof,
  - ii. in relation to a document issued by a court, a copy of the document certified to be a true copy under the seal of the court and signed by the registrar or clerk thereof,
  - iii. in relation to a document in the custody of the Department, a copy of the document certified to be a true copy under the seal of the Minister and signed by the Minister or by such officer of the Department as is designated by the regulations;
8. "Commission" means the Ontario Securities Commission;
9. "corporation" means a body corporate with share capital to which this Act applies;
10. "court" means the Supreme Court of Ontario presided over by one of those judges of the High Court who are designated by the Chief Justice of the High Court for the purpose of hearing applications under this Act;
11. "debt obligation" means a bond, debenture, note or other similar obligation of a body corporate, whether secured or unsecured;
12. "Department" means the Department of the Minister;
13. "equity share" means any share of any class of shares of a body corporate carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing;



14. "financial statement" means a financial statement referred to in section 172;
15. "insider" or "insider of a corporation" means,
  - i. any director or senior officer of a corporation that is offering its securities to the public,
  - ii. any person who beneficially owns, directly or indirectly, equity shares of such a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, but, in computing the percentage of voting rights attached to equity shares owned by an underwriter as defined in *The Securities Act, 1966*,<sup>1966, c. 142</sup> there shall be excluded any equity shares that have been acquired by him as underwriter in the course of distribution to the public of such shares, but such exclusion ceases to have effect on completion or cessation of the distribution to the public by him, or
  - iii. any person who exercises control or direction over the equity shares of such a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding;
16. "interim financial statement" means a financial statement referred to in section 185;
17. "issued capital" means the issued capital as determined under section 32;
18. "Minister" means the Minister of Financial and Commercial Affairs or such other member of the Executive Council to whom the administration of this Act may be assigned.
19. "officer" means the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager, or any other person designated an officer by by-law or by resolution of the directors;
20. "personal representative", where used with reference to holding shares in that capacity, means an executor, administrator, guardian, tutor, trustee, receiver or liquidator or the committee of or curator to a mentally incompetent person;
21. "prescribed" means prescribed by the regulations;

22. "regulations" means the regulations made under this Act;
23. "related person", where used to indicate a relationship with any person, means,
- (i) any spouse, son or daughter of that person,
  - (ii) any relative of such person or of his spouse, other than a relative referred to in subparagraph i, who has the same home as such person, or
  - (iii) any body corporate of which such person and any of the persons referred to in subparagraph i or ii or the partner or employer of such person, either alone or in combination, beneficially owns, directly or indirectly, equity shares carrying more than 50 per cent of the voting rights attached to all equity shares of the body corporate for the time being outstanding.
24. "security" means any share of any class of shares or any debt obligation of a body corporate;
25. "senior officer" means,
- i. the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other individual who performs functions for the corporation similar to those normally performed by an individual occupying any such office, and
  - ii. each of the five highest paid employees of a corporation, including any individual referred to in subparagraph i;
26. "special by-law" means a by-law that is not effective until it is,
- i. passed by the directors of a corporation, and
  - ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the shareholders of the corporation duly called for that purpose, or such greater proportion of the votes cast as the articles provide, or, in lieu of such confirmation, by the consent in writing of all the shareholders entitled to vote at such meeting;

27. "special resolution" means a resolution that is not effective until it is,

- i. passed by the directors of a corporation, and
- ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the shareholders of the corporation duly called for that purpose, or such greater proportion of the votes cast as the articles provide, or, in lieu of such confirmation, by the consent in writing of all the shareholders entitled to vote at such meeting.

28. "warrant" means any document issued by a body corporate entitling the holder to purchase a security of the body corporate on specified terms. R.S.O. 1960, c. 71, s. 1; 1966, c. 28, ss. 1, 3, *part*; 1968-69, c. 16, s. 1 (1), *amended*.

(2) For the purposes of this Act, a body corporate shall be deemed to be a subsidiary of another body corporate if, but only if, Interpretation:  
subsidiary corporation

(a) it is controlled by,

- (i) that other, or
- (ii) that other and one or more bodies corporate each of which is controlled by that other, or
- (iii) two or more bodies corporate each of which is controlled by that other; or

(b) it is a subsidiary of a body corporate that is that other's subsidiary.

(3) For the purposes of this Act, a body corporate shall be deemed to be another's holding body corporate if, but only if, that other is its subsidiary. Holding corporation

(4) For the purposes of this Act, one body corporate shall be deemed to be affiliated with another body corporate if, but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. R.S.O. 1960, c. 71, s. 90 (1-3), *amended*. Affiliated corporation

(5) For the purposes of this Act, a body corporate shall be deemed to be controlled by another person or by two or more bodies corporate if, but only if, Control

- (a) shares of the first-mentioned body corporate carrying more than 50 per cent of the votes for the election

of directors are held, other than by way of security only, by or for the benefit of such other person or by or for the benefit of such other bodies corporate; and

- (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned body corporate. R.S.O. 1960, c. 71, s. 90 (4); 1966, c. 28, s. 12, *amended*.

Insider

(6) For the purposes of this Act,

- (a) every director or senior officer of a body corporate that is itself an insider of another body corporate shall be deemed to be an insider of such other body corporate;
- (b) an individual shall be deemed to own beneficially securities beneficially owned by a body corporate controlled by him or by an affiliate of such body corporate;
- (c) a body corporate shall be deemed to own beneficially securities beneficially owned by its affiliates; and
- (d) the acquisition or disposition by an insider of a put, call or other transferable option in respect of a security shall be deemed a change in the beneficial ownership of the security to which such transferable option relates. 1966, c. 28, s. 3, *part, amended*.

Insolvency

(7) For the purposes of this Act, a corporation is insolvent if its liabilities exceed the realizable value of its assets or if the corporation is unable to pay its debts as they become due.

Number of shareholders

(8) In determining the number of shareholders of a corporation, for the purposes of this Act, two or more persons holding the same share or shares jointly shall be counted as one shareholder.

Offering securities to public

(9) A body corporate shall be deemed to be offering its securities to the public where,

1966, c. 142

- (a) a primary distribution to the public as defined in *The Securities Act, 1966* of any of its securities has been made, whether within or outside Ontario, so long as any of such securities are outstanding or any securities into or for which such securities are converted or exchanged are outstanding; or
- (b) any of the shares of which are listed and posted for trading on any stock exchange within or outside Ontario,



except that where, upon the application of a corporation that has fewer than fifteen shareholders, the Commission is satisfied, in its discretion, that to do so would not be prejudicial to the public interest, the Commission may order, subject to such terms and conditions as the Commission may impose, that the Corporation shall be deemed to have ceased to be offering its securities to the public. *New.*

**2.—**(1) This Act, except where it is otherwise expressly provided, applies, Application

- (a) to every corporation incorporated by or under a general or special Act of the Parliament of the former Province of Upper Canada;
- (b) to every corporation incorporated by or under a general or special Act of the Parliament of the former Province of Canada that has its head office and carries on business in Ontario and that was incorporated with objects to which the authority of the Legislature extends; and
- (c) to every corporation incorporated by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation incorporated for the construction and working of a railway, an incline railway or a street railway, or to a corporation within the meaning of *The Loan and Trust Corporations Act* except as provided by that Act. R.S.O. 1960,  
c. 222 R.S.O. 1960, c. 71, s. 17.

(2) This Act does not apply to a corporation that, Idem

- (a) is a company within the meaning of *The Corporations Act* and has objects in whole or in part of a social nature; R.S.O. 1960,  
c. 71
- (b) is a corporation or company within the meaning of Part V of *The Corporations Act*;
- (c) is a corporation that is an insurer within the meaning of subsection 1 of section 143 of *The Corporations Act*;
- (d) is a corporation to which *The Credit Unions Act* applies. R.S.O. 1960,  
c. 79 *New.*

#### INCORPORATION

**3.—**(1) A corporation may be incorporated under this Act for any lawful objects to which the authority of the Legislature extends, except those of a corporation the incorporation of which is provided for in any other Act. Incorporation R.S.O. 1960, c. 71, s. 3 (1), *amended.*

Idem

(2) Notwithstanding subsection 1, a corporation may be incorporated under this Act with power only to lend and invest money on mortgage of real estate or otherwise, or with power only to accept and execute the office of liquidator, receiver, assignee, trustee in bankruptcy or trustee for the benefit of creditors and to accept the duty of and to act generally in the winding up of corporations, partnerships and estates, other than estates of deceased persons, and shall not by reason thereof be deemed to be a corporation within the meaning of *The Loan and Trust Corporations Act*, but the number of its shareholders, exclusive of persons who are in the employment of the company, shall be limited by its articles to five, and no such corporation shall issue debt obligations except to its shareholders, or borrow money on the security of its property except from its shareholders, or receive money on deposit or offer its securities to the public. R.S.O. 1960, c. 71, s. 3 (2); 1966, c. 28, s. 2, *amended*.

R.S.O. 1960,  
c. 222

Professions

(3) Where the practice of a profession is governed by an Act, a corporation may be incorporated to practise the profession only if such Act expressly permits the practice of such profession by a corporation and subject to the provisions of such Act. *New*.

Articles of  
incorpora-  
tion

4.—(1) One or more persons, being a body corporate or a natural person who is of the age of twenty-one years or more, may incorporate a corporation by signing and delivering to the Minister in duplicate articles of incorporation. *New*.

Contents of  
articles

(2) The articles of incorporation shall set out,

1. The name of the corporation to be incorporated.
2. The objects for which the corporation is to be incorporated.
3. The place in Ontario where the head office of the corporation is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district and the address giving the street and number, if any.
4. The authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share, or, where the shares are to be without par value, the consideration, if any, exceeding which each share may not be issued or the aggregate consideration, if any, exceeding which all the shares of each class may not be issued.

5. Where there are to be special shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to them or each class of them.
6. The restrictions, if any, to be placed on the transfer of its shares or any class thereof.
7. The number of directors of the corporation and the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the corporation.
8. The class and number of shares, if any, to be taken by each incorporator and the amount to be paid therefor.
9. The names in full, and the residence address, giving street and number, if any, of each of the incorporators.
10. Any other matter required by this Act or the regulations to be set out in the articles.

(3) The articles may set out any provision that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the corporation. R.S.O. 1960, c. 71, s. 18, *amended*. Idem

(4) Where the articles name as a first director a person who is not an incorporator, the articles shall have attached thereto his written and signed consent to act as a first director. Consent of first directors

(5) The signature of each incorporator and of each first director and the fact that each incorporator who is a natural person and each first director is of the age of twenty-one years or more shall be verified by affidavit. *New*. Affidavits

5.—(1) If the articles conform to law and the approval of any person or body required by statute to approve the incorporation has been given, the Minister shall, when all prescribed fees have been paid, Certificate of incorporation

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the incorporators or their agent a certificate of incorporation to which he shall affix the other duplicate. *New*.

(2) A corporation comes into existence upon the date set forth in its certificate of incorporation. 1961-62, c. 21, s. 1, *amended*. Idem

Idem

(3) A certificate of incorporation is conclusive proof that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act, except in a proceeding under section 250 to cancel the certificate for cause. R.S.O. 1960, c. 71, s. 9, *amended*.

## NAME

Use of  
word  
"Limited"

**6.—**(1) The name of a corporation shall have the word "Limited" or "Incorporated" or its corresponding abbreviation "Ltd." or "Inc." as the last word thereof. R.S.O. 1960, c. 71, s. 20 (1), *amended*.

Use of  
name

(2) Where a corporation or a director, officer or employee thereof uses the name of the corporation, the word "Limited" or "Incorporated" or its corresponding abbreviation "Ltd." or "Inc.", shall appear as the last word thereof.

Exception

(3) Stamping, writing, printing or otherwise marking on goods, wares or merchandise of the corporation or upon packages containing the goods, wares or merchandise shall not be deemed a use of the name within the meaning of subsection 2. R.S.O. 1960, c. 71, s. 21 (1, 2), *amended*.

Use of  
name

**7.** Notwithstanding section 6, a corporation may use its name in such form and in such language as the articles provide and as the Minister approves. 1964, c. 10, s. 1, *amended*.

Corporate  
name

**8.—**(1) The name of a corporation shall not,

(a) be the same as or similar to the name of a known body corporate, association, partnership or individual whether in existence or not if its use would be likely to deceive, except where the body corporate, association, partnership or individual signifies its or his consent in writing to the use of the name in whole or in part, and, if required by the Minister,

(i) in the case of a body corporate, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles or amendment by which the name is acquired, or

(ii) in the case of an association, partnership or individual, undertakes to cease to carry on its or his business or activities, or change its or his name to a dissimilar name, within six months after the filing of the articles or amendment by which the name is acquired;



- (b) suggest or imply a connection with the Crown or the Government of Canada or the government of a municipality or any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government or municipality without the consent in writing of the appropriate authority;
- (c) where the objects applied for are of a political nature, suggest or imply a connection with a political party or a leader of a political party;
- (d) include the word "co-operative" or any abbreviation or derivation thereof;
- (e) contain any word or phrase that indicates or implies that it is incorporated for any object other than one or more of the objects set out in its articles;
- (f) contain any word or phrase or any abbreviation or derivation thereof, the use of which is prohibited or restricted under any other Act unless in the latter case the restrictions are complied with; or
- (g) in the opinion of the Minister, be objectionable on any public grounds.

(2) If a corporation through inadvertence or otherwise has acquired a name contrary to subsection 1, the Minister may, after he has given the corporation an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly. R.S.O. 1960, c. 71, s. 12 (1, 2), *amended*.

Change of  
name if  
objection-  
able

(3) Where an undertaking referred to in clause *a* of subsection 1 is given by a corporation to which this Act applies and the undertaking is not carried out within the time specified, the Minister may, after giving the corporation an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly.

Failure to  
perform  
undertaking

(4) Where an undertaking referred to in clause *a* of subsection 1 is given by a body corporate to which this Act does not apply or by an association, partnership or individual and the undertaking is not carried out within the time specified, the Minister may, after giving the corporation that acquired the name by virtue of such undertaking an opportunity to be heard, issue a certificate of amendment to the

Idem

articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate, the articles are amended accordingly. *New.*

Change not  
to affect  
rights, etc.

**9.** A change in the name of a corporation does not affect its rights or obligations. R.S.O. 1960, c. 71, s. 13.

Unauthor-  
ized use of  
"Limited",  
etc.

**10.—(1)** No person, partnership or association while not incorporated shall trade or carry on a business or undertaking under a name in which "Limited", "Incorporated" or "Corporation" or any abbreviation thereof is used. R.S.O. 1960, c. 71, s. 14, *amended.*

Idem

(2) Where a corporation carries on business or identifies itself to the public in a name or style other than as provided in the articles, such name or style shall not include the word "Limited", "Incorporated" or "Corporation" or any abbreviation thereof. *New.*

Reservation  
of name

**11.—(1)** Any person may, on application in writing and on the payment of the prescribed fee, reserve a corporate name for the use and benefit of the applicant or his nominee for a period of sixty days or such lesser period as he specifies, if the name is at the time not contrary to section 8. R.S.O. 1960, c. 71, s. 15, *amended.*

Idem

(2) During the period for which a name has been reserved, no corporation shall acquire the name or a similar name without the consent in writing of the person for whose use and benefit the name has been reserved. *New.*

Notice  
of name

**12.** An individual, partnership or association may notify the Minister of the name under which his or its business or undertaking is carried on, and thereupon the Minister shall make a notation thereof in his records. R.S.O. 1960, c. 71, s. 16, *amended.*

#### SEAL AND HEAD OFFICE

Corporate  
seal

**13.—(1)** A corporation shall have a seal which shall be adopted and may be changed by resolution of the directors. R.S.O. 1960, c. 71, s. 292, *amended.*

Idem

(2) The name of the corporation shall appear in legible characters on the seal. *New.*

Head  
office

**14.—(1)** Subject to subsection 2, a corporation shall at all times have its head office at the place in Ontario where the articles provide that the head office is to be located.

Change of  
head office

(2) A corporation may by special by-law change the municipality or geographic township in which its head office is located to another place in Ontario. R.S.O. 1960, c. 71, s. 290 (1, 2), *amended.*

(3) Where the location of the head office of a corporation is changed by reason only of the annexation or amalgamation of the place in which the head office is located to or with another municipality, such change does not constitute and has never constituted a change within the meaning of subsection 2. 1964, c. 10, s. 6. Where municipality annexed or amalgamated

(4) The corporation shall, within ten days after a by-law passed under subsection 2 has been confirmed by the shareholders, file a certified copy of the by-law with the Minister. R.S.O. 1960, c. 71, s. 290 (3), *part, amended*. Filing of by-law

(5) A corporation may by resolution of the directors change the location of its head office within a municipality or geographic township and shall, within ten days after the passing of the resolution, file with the Minister notice of the change giving the address including the street and number, if any, of the new location. *New*. Change of street address

(6) Failure to comply with subsection 4 or 5 does not affect the validity of the by-law or resolution. R.S.O. 1960, c. 71, s. 290 (4), *part, amended*. Validity

## POWERS

### *General*

**15.—**(1) Every corporation has power,

- (a) to have perpetual succession; Corporate characteristics
- (b) to contract and sue and be sued in its corporate name; and
- (c) to carry on business in or identify itself to the public by a name or style other than its corporate name. R.S.O. 1960, c. 191, s. 26 (a), *amended*.

(2) A corporation has power as incidental and ancillary to the objects set out in its articles, Incidental powers

1. to carry on any other business capable of being conveniently carried on in connection with its business or likely to enhance the value of or make profitable any of its property or rights;
2. to acquire or undertake the whole or any part of the business, property and liabilities of any person carrying on any business that the corporation is authorized to carry on;
3. to apply for, register, purchase, lease, acquire, hold, use, control, license, sell, assign or dispose of patents, patent rights, copyrights, trade marks, formulae, licences, inventions, processes, distinctive marks and similar rights;

4. to enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or body corporate carrying on or engaged in or about to carry on or engage in any business or transaction that the corporation is authorized to carry on or engage in or any business or transaction capable of being conducted so as to benefit the corporation;
5. to take or otherwise acquire and hold securities in any other body corporate having objects altogether or in part similar to those of the corporation or carrying on any business capable of being conducted so as to benefit the corporation;
6. to lend money to any other body corporate or any firm or person having dealings with the corporation or with whom the corporation proposes to have dealings or to any other body corporate any of whose shares are held by the corporation;
7. to apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege, that any government or authority or any body corporate or other public body may be empowered to grant, and to pay for, aid in and contribute toward carrying it into effect and to assume any liabilities or obligations incidental thereto;
8. to establish and support or aid in the establishment and support of associations, institutions, funds or trusts for the benefit of employees or former employees of the corporation or its predecessors, or the dependants or connections of such employees or former employees, and grant pensions and allowances, and make payments towards insurance or for any object similar to those set forth in this paragraph, and to subscribe or guarantee money for charitable, benevolent, educational or religious objects or for any exhibition or for any public, general or useful objects;
9. to promote any body corporate for the purpose of acquiring or taking over any of the property and liabilities of the body corporate or for any other purpose that may benefit the corporation;
10. to purchase, lease, take in exchange, hire or otherwise acquire any personal property and any rights or



privileges that the corporation considers necessary or convenient for the purposes of its business;

11. to construct, maintain and alter any buildings or works necessary or convenient for its objects;
12. to acquire by purchase, lease or otherwise and hold any land or interest therein necessary for its actual use and occupation or for carrying on its undertaking, and, when no longer necessary therefor, to sell, alienate or convey it;
13. to take, hold and alienate real and personal property that has in good faith been mortgaged to the corporation by way of security for, or conveyed to it in satisfaction of, debts previously contracted in the course of its business, or purchased at judicial sales upon levy for such indebtedness, or otherwise purchased for the purpose of avoiding a loss to the corporation;
14. to construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences that may advance the interests of the corporation, and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
15. to raise and assist in raising money for, and aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person or body corporate and guarantee the performance or fulfilment of any contracts or obligations of any person or body corporate, and in particular guarantee the payment of the principal of and interest on the debt obligations of any such person or body corporate.
16. to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable instruments;
17. where authorized to do so by a special resolution, to sell, lease, exchange or otherwise dispose of the undertaking of the corporation or any part thereof as an entirety or substantially as an entirety for such consideration as the corporation thinks fit;

18. to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with the property of the corporation in the ordinary course of its business;
19. to adopt such means of making known the products of the corporation as may seem expedient, and in particular by advertising, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes and rewards and making donations;
20. to cause the corporation to be registered and recognized in any foreign jurisdiction or any province or territory of Canada, and designate persons therein according to the laws of that foreign jurisdiction or that province or territory of Canada to represent the corporation and to accept service for and on behalf of the corporation of any process or suit;
21. to allot and issue fully-paid shares of the corporation in payment or part payment of any property purchased or otherwise acquired by the corporation or for any past services performed for the corporation;
22. to distribute among the shareholders of the corporation in cash, kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner deemed advisable, any property of the corporation, but not so as to decrease the capital of the corporation unless the distribution is made for the purpose of enabling the corporation to be dissolved or the distribution, apart from this paragraph, would be otherwise lawful;
23. to establish agencies and branches;
24. to take or hold mortgages, hypothecs, liens and charges to secure payment of the purchase price, or of any unpaid balance of the purchase price, of any part of the property of the corporation of whatsoever kind sold by the corporation, or for any money due to the corporation from purchasers and others and to sell or otherwise dispose of any such mortgage, hypothec, lien or charge;
25. to pay all costs and expenses of or incidental to the incorporation and organization of the corporation;
26. to invest and deal with the moneys of the corporation not immediately required for the objects of the corporation in such manner as may be determined;

27. to do any of the things authorized by this subsection and all things authorized by its articles as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;
28. to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the corporation,

except that the incidental and ancillary powers of a corporation incorporated under subsection 2 of section 3 are limited to those set out in paragraphs 7, 8, 11, 12, 16, 17, 18, 20, 22 and 25. R.S.O. 1960, c. 71, ss. 22 (1), 288, *amended*.

(3) Any of the powers set out in subsection 2 may be with- Limited by articles  
held or limited by the articles. R.S.O. 1960, c. 71, s. 22 (2), *amended*.

(4) Every corporation may exercise its powers beyond the Power to act outside Ontario  
boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights. R.S.O. 1960, c. 71, s. 287, *amended*.

**16.—**(1) No act of a corporation and no transfer of real Acting outside powers  
or personal property to or by a corporation, otherwise lawful, that is heretofore or hereafter done or made, is invalid by reason of the fact that the corporation was without capacity or power to do such act or make or receive such transfer, but such lack of capacity or power may be asserted,

- (a) in a proceeding against the corporation by a shareholder under subsection 2;
- (b) in a proceeding by the corporation, whether acting directly or through a receiver, liquidator, trustee or other legal representative or through shareholders in a representative capacity, against a director or officer or former director or officer of the corporation; or
- (c) as cause for the cancellation of the certificate of incorporation of the corporation under section 250.

(2) A shareholder of a corporation may apply to a court Restraining order  
of competent jurisdiction for an order to restrain the corporation from doing any act or transferring or receiving the transfer of real or personal property on the ground that the corporation lacks capacity or power for the purpose, and the court may, if it deems it to be just and equitable, grant an order prohibiting the corporation from doing the act or transferring or receiving the transfer of the real or personal property, but,

where the act or transfer sought to be restrained or prohibited is being or to be done or made under a contract to which the corporation is a party,

- (a) all the parties to the contract shall be parties to the proceeding;
- (b) the court in granting the order may set aside the contract and allow the corporation or other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the granting of the order and setting aside of the contract, other than anticipated profits from the contract. *New.*

Loans to  
shareholders,  
directors,  
etc.

**17.—**(1) Except as provided in subsection 2, a corporation shall not,

- (a) make loans to any of its shareholders, directors or employees; or
- (b) give, directly or indirectly, by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made by any person of any shares of the corporation.

Exceptions

(2) A corporation may,

- (a) make loans to any of its shareholders, directors or employees in the ordinary course of its business where the making of loans is part of the ordinary business of the corporation;
- (b) make loans to *bona fide* full-time employees of the corporation whether or not they are shareholders or directors, with a view to enabling them to purchase or erect dwelling houses for their own occupation, and may take from such employees mortgages or other security for the repayment of such loans;
- (c) provide, in accordance with a scheme for the time being in force, money by way of loan for the purchase of or subscription for shares of the corporation by trustees, to be held by or for the benefit of *bona fide* employees of the corporation, whether or not they are shareholders or directors; or
- (d) make loans to *bona fide* employees of the corporation, other than directors, whether or not they are shareholders, with a view to enabling them to purchase or subscribe for shares of the corporation to be held by them by way of beneficial ownership.



(3) The power mentioned in clause *b, c or d* of subsection 2 <sup>By special by-law only</sup> may be exercised only under the authority of a special by-law, only R.S.O. 1960, c. 71, s. 23 (1, 2), *amended*.

### *Contracts*

**18.**—(1) A contract that if entered into by an individual <sup>Contracts in writing under seal</sup> person would be by law required to be in writing and under seal may be entered into on behalf of a corporation in writing under the seal of the corporation.

(2) A contract that if entered into by an individual person <sup>Contracts in writing not under seal</sup> would be by law required to be in writing signed by the parties to be charged therewith may be entered into on behalf of a corporation in writing signed by any person acting under its authority, express or implied.

(3) A contract that if entered into by an individual person <sup>Parol contracts</sup> would be by law valid although made by parol only and not reduced into writing may be entered into by parol on behalf of a corporation by any person acting under its authority, express or implied. R.S.O. 1960, c. 71, s. 293, *amended*.

**19.** A corporation may, by writing under seal, empower <sup>Power of attorney</sup> any person, either generally or in respect of any specified matters, to execute, as its attorney and on its behalf in any place within or outside Ontario, documents to which it is a party in any capacity and that are required by law to be under seal, and every document signed by such attorney on behalf of the corporation acting within the scope of his authority, express or implied, and under his seal binds the corporation and has the same effect as if it were under the seal of the corporation. R.S.O. 1960, c. 71, s. 294, *amended*.

**20.**—(1) In this section,

<sup>Interpre-  
tation</sup>

- (a) “contractor” means a person who enters into a pre-incorporation contract in the name of or on behalf of a corporation before its incorporation;
- (b) “other party” means a person with whom a contractor enters into a pre-incorporation contract;
- (c) “pre-incorporation contract” means a contract entered into by a contractor in the name of or on behalf of a corporation before its incorporation.

(2) A corporation may adopt a pre-incorporation contract <sup>Adoption of pre-incorporation contracts</sup> entered into in its name or on its behalf, and thereupon the corporation is entitled to the benefits and is subject to the

liabilities that were contracted in its name or on its behalf and the contractor ceases to be entitled to such benefits or to be subject to such liabilities.

Non-  
adoption  
of pre-  
incor-  
poration  
contracts

(3) Where a pre-incorporation contract is not adopted by a corporation, the contractor is entitled to the benefits and subject to the liabilities under the contract and is entitled to recover from the corporation the value of any benefit received by the corporation under the contract.

Application  
to court  
for relief

(4) Whether or not a pre-incorporation contract is adopted by the corporation, the other party may apply to the court which may, notwithstanding subsections 2 and 3, make an order fixing or apportioning liability as between the contractor and the corporation in any manner the court considers just and equitable under the circumstances. R.S.O. 1960, c. 71, s. 286, *amended*.

### *By-laws and Resolutions*

By-laws

**21.—**(1) The directors may pass by-laws not contrary to this Act or to the articles to regulate,

- (a) the allotment and issue of shares, the payment thereof, the issue of share certificates, the transfer and the registration of transfers of shares;
- (b) the declaration and payment of dividends;
- (c) the qualification and remuneration of the directors;
- (d) the time for and the manner of election of directors;
- (e) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (f) the time and place and the notice to be given for the holding of meetings of shareholders and of the board of directors, the quorum at meetings of shareholders, the requirements as to proxies, and the procedure in all things at shareholders' meetings and at meetings of the board of directors;
- (g) the conduct in all other particulars of the affairs of the corporation.

(2) Subject to section 22, a by-law passed under subsection 1 and a repeal, amendment or re-enactment thereof is effective from the time of its passing if it is confirmed, with or without variation, at a general meeting of the shareholders duly called for that purpose or at the next annual meeting of the shareholders, whichever is held first. Confirmation

(3) The shareholders may, at the general meeting or the annual meeting mentioned in subsection 2, confirm, reject, amend or otherwise deal with any by-law passed by the directors and submitted to the meeting for confirmation, but no act done or right acquired under any such by-law is prejudicially affected by any such rejection, amendment or other dealing. R.S.O. 1960, c. 71, s. 67 (1, 3), *amended*. Powers  
re con-  
firmation

(4) Where a by-law or repeal, amendment or re-enactment thereof is not confirmed at a meeting as required by subsection 2, it has effect from the time of its passing until the meeting but not thereafter, and no subsequent by-law, repeal, amendment or re-enactment of the same or similar substance has any effect until it is confirmed at a general meeting of the shareholders duly called for that purpose. R.S.O. 1960, c. 71, s. 67 (2), *amended*. Rejection

**22.**—(1) A by-law relating to the remuneration of a director as director shall fix the remuneration and the period for which it is to be paid. *New*. Remuneration of  
directors

(2) A by-law passed under subsection 1 is not effective until it is confirmed at a general meeting of the shareholders duly called for that purpose. R.S.O. 1960, c. 71, s. 68. Confirmation

**23.**—(1) Any by-law or resolution consented to at any time during a corporation's existence by the signatures of all the directors is as valid and effective as if passed at a meeting of the directors duly called, constituted and held for that purpose. By-laws  
and  
resolutions

(2) Any resolution consented to at any time during a corporation's existence by the signatures of all the shareholders entitled to vote at a meeting of shareholders is as valid and effective as if passed at a meeting of the shareholders duly called, constituted and held for that purpose. Idem

(3) Any by-law or resolution passed by the directors at any time during a corporation's existence may, in lieu of confirmation at a general meeting of shareholders, be confirmed in writing by all the shareholders entitled to vote at such meeting. Alternative  
method of  
confirming  
by-laws

Evidentiary  
value of  
signatures

(4) Where a by-law or resolution purports to have been consented to or confirmed under this section by the signatures of all the directors or shareholders, as the case may be, of the corporation, the signatures to the by-law or resolution are admissible in evidence as *prima facie* proof of the signatures of the directors or shareholders, as the case may be, that they purport to represent and are admissible in evidence as *prima facie* proof that the signatories to the by-law or resolution were all the directors or all the shareholders entitled to vote at meetings of shareholders, as the case may be, at the date that the by-law or resolution purports so to have been consented to or confirmed. R.S.O. 1960, c. 71, s. 311, *amended*.

## SHARES

### *Authorized Capital*

Authorized  
capital

**24.**—(1) The authorized capital of a corporation shall be divided into shares with par value or without par value or both and may consist of shares of more than one class.

Par  
shares

(2) Where all the shares of a corporation are with par value, its authorized capital shall be expressed in Canadian or other currency in its articles, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of shares of each class multiplied by the par value thereof. R.S.O. 1960, c. 71, s. 24 (1, 2), *amended*.

No par  
shares

(3) Where all the shares of a corporation are without par value, its authorized capital shall be expressed in its articles as a specified number of shares.

No par  
and par  
shares

(4) Where part of the shares of a corporation are with par value and part are without par value, its authorized capital shall be expressed in its articles as a specified number of shares of each class of shares having a specified par value and a specified number of shares of each class of shares without par value. R.S.O. 1960, c. 71, s. 24 (3), *amended*.

Considera-  
tion for  
no par  
shares

**25.**—(1) Where all the shares of a corporation are without par value or where part of its shares are with par value and part are without par value, the articles may provide,

- (a) that each share without par value shall not be issued for a consideration; or
- (b) the shares of each class of shares without par value shall not be issued for an aggregate consideration,



exceeding in amount or value a stated amount in Canadian or other currency, and the articles may provide, in addition, that such share or shares may be issued for such greater amount as the board of directors of the corporation by resolution determines.

(2) A resolution referred to in subsection 1 is not effective until,

Resolution  
increasing  
aggregate  
considera-  
tion for  
no par  
shares

(a) a certified copy thereof has been filed with the Minister;

(b) all prescribed fees have been paid; and

(c) the Minister has so certified. R.S.O. 1960, c. 71, s. 24 (4), *amended*.

**26.**—(1) The common shares of a corporation shall be shares to which there is attached no preference, right, condition, restriction, limitation or prohibition set out in the articles of the corporation, other than a restriction on the allotment, issue or transfer.

Common  
shares

(2) Where a corporation has one class of shares, that class shall be common shares and designated as provided in the articles. *New*.

Classes  
of shares

(3) Where a corporation has more than one class of shares, one class shall be common shares, designated as provided in the articles, and the other shares shall be special shares and may consist of one or more classes of special shares and shall have attached thereto the designations, preferences, rights, conditions, restrictions, limitations or prohibitions set out in the articles.

Idem

(4) No class of special shares shall be designated as preference shares or by words of like import, unless that class has attached thereto a preference or right over the common shares. R.S.O. 1960, c. 71, s. 27 (1), *amended*.

Preference  
shares

**27.**—(1) Each class of special shares may have attached to it preferences, rights, conditions, restrictions, limitations or prohibitions, including but not limited to,

Special  
shares

(a) the right to cumulative, non-cumulative or partially cumulative dividends;

(b) a preference over any other class or classes of shares as to the payment of dividends;

- (c) a preference over any other class or classes of shares as to repayment of capital upon the dissolution of the corporation or otherwise;
- (d) the exclusive right to elect part of the board of directors;
- (e) the right to convert the shares of that class into shares of another class or classes of shares;
- (f) the right of the corporation at its option to redeem all or part of the shares of that class;
- (g) the purchase for cancellation by the corporation of all or part of the shares of that class by agreement with the holders thereof at the lowest price at which, in the opinion of the directors, such shares are obtainable, but not exceeding an amount stated in or determined by the articles;
- (h) conditions, restrictions, limitations or prohibitions on the right to vote at meetings of shareholders. R.S.O. 1960, c. 71, s. 27 (1, 2), *amended*.

Valuation  
of shares

(2) Any provision in the articles under clause *c* or *f* of subsection 1 shall set out the method by which the amount to be paid in respect of each share of the class is to be determined. *New*.

Equality  
of shares  
of a class

**28.** Except as provided in section 29, each share of a class shall be the same in all respects as every other share of that class. R.S.O. 1960, c. 71, s. 25.

Special  
shares in  
series

**29.**—(1) The articles of a corporation may authorize the issue from time to time in one or more series of the special shares of a class and may authorize the directors to fix from time to time before such issue the designation, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to the shares of each series of the class.

Voting  
rights

(2) The shares of all series of the same class of special shares shall carry the same voting rights or the same restrictions, conditions, limitations or prohibitions on the right to vote.

Proportionate  
abatement

(3) Where any dividends or amounts payable on a repayment of capital are not paid in full, the shares of all series of the same class of special shares shall participate rateably in respect of such dividends, including accumulations, if any,

in accordance with the sums that would be payable on such shares if all such dividends were declared and paid in full, and on any repayment of capital in accordance with the sums that would be payable on such repayment of capital if all sums so payable were paid in full. R.S.O. 1960, c. 71, s. 28 (1-3), *amended*.

**30.**—(1) The articles may set forth the designation, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the first series to be issued in which case the special shares of the first series may be issued in accordance with the articles. Provision for first series in articles

(2) A series, other than one to which subsection 1 applies, shall not be issued until, Conditions to issue of series

- (a) the directors have by resolution fixed the designation, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the special shares of the series; and
- (b) the statement referred to in section 31 has been filed with the Minister and the certificate of the Minister has been issued under section 31. R.S.O. 1960, c. 71, s. 28 (4, 5), *amended*.

**31.**—(1) For the purpose of bringing a resolution passed by the directors under subsection 2 of section 30 into effect the corporation shall deliver to the Minister, within six months after the resolution has been passed, a statement in duplicate executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation, and verified by affidavit of one of the officers or directors signing the statement, setting out, Filing of statement

- (a) the name of the corporation;
- (b) a certified copy of the resolution;
- (c) that the resolution was duly passed by the directors;
- (d) the date of the passing of the resolution; and
- (e) that the conditions, if any, contained in the articles or in any prior resolution precedent to the creation and issue of the shares of the series have been complied with.

(2) If the statement conforms to law, the Minister shall, when all prescribed fees have been paid, Issuance of certificate

- (a) endorse on each duplicate of the statement the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of the filing to which he shall affix the other duplicate.

Effect of  
certificate

(3) Upon the date set forth in the certificate of filing the resolution becomes effective and constitutes an amendment to the articles. *New.*

### *Issued Capital*

Issued  
capital,  
par value  
shares:

**32.**—(1) Where all the shares of a corporation are with par value, its issued capital shall be expressed in Canadian or other currency, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of issued shares of each class multiplied by the par value thereof less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act.

no par  
value  
shares, etc.

(2) Where the shares of a corporation are without par value or where part of its shares are with par value and part are without par value, its issued capital shall be expressed in Canadian or other currency, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of issued shares of each class with par value multiplied by the par value thereof, together with the amount of the consideration for which the shares without par value from time to time outstanding were issued and together with such amounts as from time to time by by-law of the corporation may be transferred thereto and less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act. R.S.O. 1960, c. 71, s. 30 (1, 2), *amended*.

Cancellation  
of par  
share:

**33.**—(1) Where an issued share of a class with par value is cancelled, the issued capital is decreased by an amount equal to the par value of the shares of that class. *New.*

of no par  
share

(2) Where an issued share of a class without par value is cancelled, the issued capital is decreased by an amount equal to the amount obtained by dividing,

- (a) that part of the issued capital attributable to that class of shares in accordance with subsection 2 of section 32,

by



- (b) the number of issued shares of that class. R.S.O. 1960, c. 71, s. 35, *amended*.

(3) Where a fraction of an issued share of a class is cancelled, the issued capital is decreased by an amount that bears the same proportion to the amount determined under subsection 1 or 2, as the case may be, that the fraction bears to a whole share of that class. *New.*

*Redemption, Purchase, Conversion and Surrender*

**34.**—(1) Where the shares of a class of special shares are made redeemable by the articles and part only of the special shares are to be redeemed, the shares to be redeemed shall be selected,

- (a) by lot in such manner as the board of directors determines;
- (b) as nearly as may be in proportion to the number of special shares of the class registered in the name of each shareholder; or
- (c) in such other manner as the board of directors determines with the consent of the holders of special shares of the class obtained in the manner set out in subsection 2,

but the articles may confine the manner of selection to that set out in clause *a* or in clause *b*.

(2) Where shares of a class of special shares are selected in the manner referred to in clause *c* of subsection 1, the selection shall be consented to in writing by,

- (a) all the holders of the special shares of the class; or
- (b) at least 95 per cent of the holders of the special shares of the class holding at least 95 per cent of the issued shares of that class if, after twenty-one days notice has been given by sending notice to each of the holders of shares of that class addressed to him at his latest address as shown on the records of the corporation, none of the holders of shares of that class dissents in writing to the corporation. R.S.O. 1960, c. 71, s. 27 (7, 8), *amended*.

(3) Where a holder of redeemable special shares of a corporation that is not offering its securities to the public dies or leaves its employment, notwithstanding subsection 1, it may within one year of such event redeem all or any of the special shares held by him. R.S.O. 1960, c. 71, s. 27 (9), *amended*.

Purchase of  
special  
shares for  
cancellation

**35.**—(1) Where the shares of a class of special shares are made purchasable for cancellation by the articles, then, except where the purchase is made on the open market or all the holders of the class consent to the purchase, the corporation may purchase the shares only pursuant to tenders received by the corporation upon request for tenders addressed to all the holders of the shares of the class, and the corporation shall accept only the lowest tenders. R.S.O. 1960, c. 71, s. 27 (11), *amended*.

Idem

(2) Where, in response to the invitation for tenders, two or more shareholders submit tenders at the same price and the tenders are accepted by the corporation as to part only of the shares offered, the corporation shall accept part of the shares offered in each tender in proportion as nearly as may be to the total number of shares offered in each tender. *New*.

Conversion  
of par  
shares to  
par shares

**36.**—(1) The articles of a corporation shall not provide for the conversion of shares with par value into shares with par value if the aggregate par value of the shares being converted is not equal to the aggregate par value of the shares into which they are converted.

par shares  
to no par  
shares

(2) Where, in accordance with the articles, shares with par value are converted into shares without par value, the issued capital of the corporation attributable to the shares resulting from the conversion shall be equal to the aggregate par value of the shares converted.

no par  
shares to  
par shares

(3) Where the articles provide for the conversion of shares without par value into shares with par value, no such share shall be converted unless that part of the issued capital attributable to the shares being converted is equal to the aggregate par value of the shares resulting from the conversion.

no par  
shares to  
no par  
shares

(4) Where, in accordance with the articles, shares without par value are converted into shares without par value, the issued capital shall remain unchanged. R.S.O. 1960, c. 71, s. 27 (15), *amended*.

of special  
shares

(5) Where special shares of a class are converted into the same or another number of shares of another class or classes, whether special or common, the shares converted thereupon become the same in all respects as the shares of the class or classes respectively into which they are converted, and the number of shares of each class affected by the conversion is changed and the articles are amended accordingly. R.S.O. 1960, c. 71, s. 27 (14).

Surrender  
of mutual  
fund shares

**37.**—(1) Where the only undertaking of a corporation is the business of investing the funds of the corporation, its articles may provide for the issuing of one or more classes of

mutual fund shares that have attached thereto conditions requiring the corporation to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof.

(2) Articles that provide for the issuing of mutual fund shares shall set out the conditions governing, <sup>Conditions and price</sup>

(a) the surrender of mutual fund shares or any fractions or parts thereof; and

(b) the determination of the price to be paid therefor and the manner and time of payment thereof. *New.*

**38.**—(1) A corporation shall not redeem or purchase special shares or accept mutual fund shares for surrender if the corporation is insolvent or if the redemption, purchase or surrender would render the corporation insolvent. <sup>Redemption, purchase or surrender while insolvent</sup>

(2) Special shares that are redeemed or purchased by a corporation are thereby cancelled, and the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly. R.S.O. 1960, c. 71, s. 27 (12, 13), *amended*. <sup>Cancellation on redemption, purchase or surrender</sup>

(3) Where mutual fund shares are accepted for surrender by a corporation, the shares are not thereby cancelled, and the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. *New.* <sup>Idem: mutual funds</sup>

**39.**—(1) Where authorized in its articles and subject to any restrictions contained therein, a corporation may purchase any of its common shares out of surplus. <sup>Purchase of common shares out of surplus:</sup>

(2) A corporation may purchase any of its common shares out of issued capital if the purchase is made, <sup>out of capital</sup>

(a) for the purpose of eliminating fractions of shares; or

(b) for the purpose of collecting or compromising indebtedness to the corporation.

(3) A corporation shall not purchase common shares under subsection 1 or 2 if the corporation is insolvent or if the purchase would render the corporation insolvent. <sup>Purchase while insolvent</sup>

(4) No purchase of common shares shall be made under this section by a corporation unless the purchase is authorized by an express resolution of the board of directors. <sup>Authorization</sup>

Method

(5) Where a corporation purchases its common shares under this section, the purchase shall be made,

- (a) by invitation addressed to all shareholders for tenders of shares and *pro rata* from the shares so tendered; or
- (b) from *bona fide* full-time employees and former employees of the corporation; or
- (c) where the corporation is offering its shares to the public, by purchase on the open market. *New.*

Cancellation  
or resale

**40.**—(1) Where common shares are purchased by a corporation under subsection 1 of section 39,

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the corporation are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
  - (i) the board of directors may at the time of the purchase cancel the shares, in which case the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly; or
  - (ii) the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation.

Cancellation

(2) Common shares or fractions thereof purchased under subsection 2 of section 39 are thereby cancelled and the authorized and issued capital are thereby decreased and the articles are amended accordingly. *New.*

Corporation  
insider re  
purchase  
and resale  
of own  
shares

**41.** Where a corporation purchases common shares under subsection 1 of section 39 or resells them under subclause ii of clause *b* of subsection 1 of section 40, the corporation shall be deemed to be an insider in respect of the purchase or resale, and sections 148 to 152 apply to the purchase or resale. *New.*

Perform-  
ance of  
agreement  
to purchase  
common  
shares

**42.** An agreement for the purchase by a corporation of its common shares is not invalid or unenforceable because of the possibility that the corporation may not be able to comply with section 39, but such agreement is,

- (a) subject to subsection 2 of section 135, valid if performed; and



- (b) if not performed, valid and enforceable to the extent the corporation is able to purchase its common shares at the time for performance. *New.*

**43.**—(1) A corporation may accept from any shareholder a donation of any of its shares without any repayment of capital in respect thereof. <sup>Donation of shares</sup>

(2) Shares accepted under subsection 1 are not thereby cancelled, and the board of directors may sell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. *New.* <sup>Sale of donated shares</sup>

#### *Allotment, Issue and Transfer*

**44.**—(1) In the absence of a provision to the contrary in the articles or by-laws of the corporation, shares may be allotted and issued at such times and in such manner and to such persons or class of persons as the directors determine. <sup>Issue of shares</sup>

(2) Shares with par value shall not be allotted or issued except for a consideration at least equal to the product of the number of shares allotted or issued multiplied by the par value thereof. <sup>Consideration for par shares</sup>

(3) Subject to section 25, shares without par value shall not be allotted or issued except for such consideration as is fixed by the directors. <sup>Consideration for no par shares</sup>

(4) No share shall be issued until it is fully paid and a share is not fully paid until all the consideration therefor in cash, property or services, as determined under this section, has been received by the corporation. <sup>Fully-paid shares</sup>

(5) For the purposes of subsection 4 and paragraph 21 of subsection 2 of section 15 a document evidencing indebtedness does not constitute property and services shall be past services actually performed for the corporation, and the value of property or services shall be the value the directors determine by express resolution to be in all the circumstances of the transaction the fair equivalent of the cash value. *R.S.O. 1960, c. 71, s. 31, amended.* <sup>Idem</sup>

**45.**—(1) A corporation may provide by special by-law for the payment of commissions or allowing discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the corporation, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares, but, except in the case of mining, gas or oil corporations or corporations at least 75 per cent of whose assets are of a wasting character, no such commission or discount shall exceed 25 per cent of the amount of the subscription price. <sup>Commission on sale of shares</sup>

No  
unauthorized  
commissions

(2) Except as provided in subsection 1, no corporation shall apply any of its shares or capital, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares of the corporation or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares, whether the shares or capital is so applied by being added to the purchase money of any property acquired by the corporation or to the contract price of any work to be executed for the corporation, or is paid out of the nominal purchase money or contract price or otherwise. R.S.O. 1960, c. 71, s. 32, *amended*.

Shares  
personal  
property

**46.** The shares of a corporation are personal property. R.S.O. 1960, c. 71, s. 38, *amended*.

Restrictions  
on transfer

**47.—**(1) A corporation shall not impose restrictions on the transfer of shares except such restrictions as are authorized by the articles. R.S.O. 1960, c. 71, s. 39 (1), *amended*.

No public  
offer if  
transfer  
restricted

(2) A corporation that has imposed restrictions on the transfer of its shares shall not offer its shares to the public unless the restrictions are necessary,

(a) by or under any Act of Canada or Ontario as a condition to the obtaining, holding or renewal of authority to engage in any activity necessary to its undertaking; or

(b) for the purpose of achieving or preserving its status as a Canadian corporation for the purpose of any Act of Canada or Ontario. *New*.

Lien for  
indebted-  
ness

(3) Except in the case of shares listed on a stock exchange recognized by the Commission, where the articles or by-laws so provide the corporation has a lien to the extent of the debt on the shares registered in the name of a shareholder who is indebted to the corporation. R.S.O. 1960, c. 71, s. 39 (3), *amended*.

Subsidiaries  
not to hold  
shares of  
holding  
corporations

**48.—**(1) Except in the cases mentioned in this section, a corporation shall not be a shareholder of a corporation that is its holding corporation, and any allotment or transfer of shares of a corporation to its subsidiary corporation is void.

Application

(2) This section does not apply to a subsidiary holding shares as personal representative unless the holding corporation or a subsidiary thereof is beneficially interested under a trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

(3) This section does not prevent a subsidiary that on the 30th day of April, 1954, held shares of its holding corporation from continuing to hold such shares, but, subject to subsection 2, the subsidiary has no right to vote at meetings of shareholders of the holding corporation or at meetings of any class of shareholders thereof. Exception

(4) Subject to subsection 2, subsections 1 and 3 apply in relation to a nominee for a corporation that is a subsidiary as if the references in subsections 1 and 3 to such a corporation included references to a nominee for it. R.S.O. 1960, c. 71, s. 94. Nominees

### *Share Certificates*

**49.**—(1) Every shareholder is entitled to a share certificate in respect of the shares held by him, signed by the proper officers in accordance with the corporation's by-laws in that regard, but the corporation is not bound to issue more than one share certificate in respect of a share or shares held jointly by several persons, and delivery of a share certificate to one of several joint shareholders is sufficient delivery to all. Share certificates

(2) A corporation may charge a fee of not more than \$1 for every share certificate issued, except that, in the case of the allotment and issue of shares, no fee shall be charged. R.S.O. 1960, c. 71, s. 43 (1, 3). Fee

**50.** A share certificate shall be signed manually by at least one officer of the corporation or by or on behalf of a transfer agent or branch transfer agent of the corporation, and the corporation may by by-law provide that any additional signatures required on share certificates may be printed, engraved, lithographed or otherwise mechanically reproduced thereon, and in such event share certificates so signed are as valid as if they had been signed manually. R.S.O. 1960, c. 71, s. 46. Signing of share certificates

**51.**—(1) Every share certificate shall state upon its face, Contents of share certificates

- (a) the name of the corporation and the words "Incorporated under the law of the Province of Ontario" or words of like effect;
- (b) the name of the person to whom the share is issued as holder; and
- (c) the number and class of shares represented thereby and whether the shares are with par value or without par value and, if with par value, the par value thereof. R.S.O. 1960, c. 71, s. 45 (1), *amended*.



Statements  
on share  
certificates

(2) A share certificate issued for a share of a class of special shares shall,

- (a) legibly state on the certificate or have attached thereto a legible statement of the preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class of shares; or
- (b) legibly state on the certificate that there are preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class and that a copy of the full text thereof is obtainable on demand and without fee from the corporation.

Production  
of  
preferences,  
etc.

(3) Where a share certificate contains a statement as provided in clause *b* of subsection 2, the corporation shall furnish to the shareholder on demand without fee a copy of the full text of the preferences, rights, conditions, restrictions, prohibitions and limitations attaching to the share.

Lien on  
shares

(4) Where the articles or by-laws provide that a corporation has a lien on shares as authorized by subsection 2 of section 47, the right of the corporation to the lien shall be noted conspicuously on every share certificate issued by the corporation.

Transfer  
restricted

(5) A share certificate for a share the transfer of which is restricted in accordance with the articles shall have the restriction noted conspicuously on the certificate. *New.*

Fractional  
shares

**52.** Where, as a result of a change in the authorized capital of a corporation, a person becomes entitled to a fraction of a share, he is not entitled to be registered on the records of the corporation in respect thereof or to receive a share certificate therefor, but he is entitled to receive a bearer fractional certificate in respect of such fraction, and, on presentation at the head office of the corporation or at a place designated by the corporation of bearer fractional certificates for fractions that together represent a whole share, a share certificate for a whole share shall be issued in exchange therefor, and sections 63 to 97 apply thereto. R.S.O. 1960, c. 71, s. 37 (1, 2), *amended.*

#### BORROWING

Borrowing  
powers

**53.—**(1) When authorized by special by-law, the directors may,

- (a) borrow money on the credit of the corporation; or
- (b) issue, sell or pledge debt obligations of the corporation; or



- (c) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal, movable or immovable property of the corporation, including book debts, rights, powers, franchises and undertaking, to secure any debt obligations or any money borrowed, or other debt or liability of the corporation. R.S.O. 1960, c. 71, s. 58 (1), *amended*.

(2) Any by-law referred to in subsection 1 may,

Contents  
of by-law

- (a) limit the amount to be borrowed as determined by the by-law; and
- (b) provide for the delegation by the directors of the powers conferred on them under the by-law to such directors or officers of the corporation and to such extent and manner as is set out in the by-law. *New*.

**54.** Nothing in this Act prohibits the issue of debt obligations in bearer form. *New*.

Bearer  
debt  
obligations

**55.** A condition contained in a debt obligation or in an instrument for securing a debt obligation is not invalid by reason only that the debt obligation is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long. R.S.O. 1960, c. 71, s. 59, *amended*.

Irredeem-  
able debt  
obligation

**56.**—(1) Where a corporation makes a charge, mortgage or other instrument of hypothecation or pledge to secure its debt obligations, the corporation shall, forthwith after the making thereof, file a duplicate original or certified copy of the instrument in the office of the Minister, but such filing may be made by any interested person. R.S.O. 1960, c. 71, s. 60 (1), *amended*.

Filing  
debt  
obligations

(2) Where the filing is by an interested person under subsection 1, that person is entitled to recover from the corporation the amount of any prescribed fee paid by him on such filing. *New*.

Recovery  
of fee

(3) Subsection 1 does not apply to a charge or mortgage filed with the Minister under *The Corporation Securities Registration Act*, or any other Act. R.S.O. 1960, c. 71, s. 60 (2).

Exception  
R.S.O. 1960,  
c. 70

### *Indenture Trustees*

**57.**—(1) In this section and in sections 58 to 62,

Interpre-  
tation

- (a) “trust indenture” means any deed, indenture or document howsoever designated, including any supplement or amendment thereto, by the terms of

which a body corporate issues or guarantees debt obligations and in which a trustee is named as trustee for the holders of the debt obligations issued or guaranteed thereunder;

- (b) "trustee" means any person named as trustee under the terms of a trust indenture, whether or not the person is a trust company authorized to carry on business in Ontario. *New.*

Application  
of sections  
58 to 62



(2) This section and sections 58 to 62 shall apply to every body corporate, except corporations, offering their debt obligations to the public in Ontario under a trust indenture and to every corporation offering their debt obligations to the public under a trust indenture.

Resident  
trustee

(3) Every body corporate whose debt obligations are offered to the public in Ontario or issued under a trust indenture in Ontario shall have a trustee resident or authorized to do business in Ontario.

Statutory  
provisions  
in trust  
indentures

**58.—**(1) Trust indentures shall be deemed to contain the following provisions:

1. In the exercise of the rights, duties and obligations prescribed or conferred by the terms of the trust indenture, the trustee shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.
2. In the exercise of his rights, duties and obligations the trustee may, if he is acting in good faith, rely, as to the truth of the statements and the accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or other requirement of the trustee indenture or required by the trustee to be furnished to him in the exercise of his rights and duties under the trust indenture where,
  - (a) the statutory declarations, opinions, reports or certificates are furnished under subsection 1 of section 59, they comply with subsections 2 and 3 thereof; and
  - (b) the trustee examines the evidence furnished to him under section 59 in order to determine whether such evidence indicates compliance with the applicable requirements of the trust indenture.

3. The trustee shall be required to give to the holders of debt obligations issued under the trust indenture, within thirty days after the trustee becomes aware of the occurrence thereof, notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee in good faith determines that the withholding of such notice is in the best interests of the holders of the debt obligations and so advises the issuer in writing

(2) A person shall not be appointed a trustee under a trust indenture if a material conflict of interest exists in the trustee's role as a fiduciary thereunder at the time of the execution and delivery of the said trust indenture but if, notwithstanding the provisions of this section, such a material conflict of interest exists, the validity and enforceability of the said trust indenture, the security created thereby and thereunder and the securities issued thereunder shall not be affected in any manner whatsoever by reason only that such material conflict of interest exists but such trustee shall, within ninety days after ascertaining that he has such material conflict of interest, either eliminate such material conflict of interest or resign from office, and where a material conflict of interest arises subsequently to the appointment of the trustee under a trust indenture, he shall, within ninety days after ascertaining that he has such material conflict of interest, either eliminate such material conflict of interest or resign from office. *New.*

**59.**—(1) The issuer or guarantor of debt obligations issued under the trust indenture shall furnish to the trustee evidence of compliance with every covenant, condition or other requirement specified in the trust indenture to be furnished to the trustee or required by the trustee to be furnished to him in the exercise of his rights and duties under the trust indenture relating to,

- (a) the certification and delivery of debt obligations under the trust indenture;
- (b) the release or release and substitution of property subject to any mortgage, charge, lien or other encumbrance created by the trust indenture;
- (c) the satisfaction and discharge of the trust indenture;
- (d) the issuing of additional debt obligations thereunder; and

- (e) any other action or step required or permitted to be taken by the issuer, guarantor or trustee under the trust indenture or as a result of any obligation imposed by the trust indenture.

Idem

(2) Evidence of compliance referred to in clauses *a*, *b*, *c* and *d* of subsection 1 shall consist of,

- (a) statutory declarations made by officers of the issuer or guarantor authorized by the trust indenture stating that the covenant, condition or other requirement has been complied with in accordance with the terms of the trust indenture;
- (b) an opinion of a solicitor that the covenant, condition or other requirement has been complied with in accordance with the terms of the trust indenture; and
- (c) in the case of a covenant, condition or other requirement compliance with which is subject to the review or examination by auditors or accountants, an opinion or report of the auditor of the issuer or guarantor or any accountant licensed under *The Public Accountancy Act*, in each case approved by the trustee, as to the accuracy or reliability of the statements required to be reviewed or examined and whether or not the statements have been made in accordance with the terms of the trust indenture.

R.S.O. 1960  
c. 317

Idem

(3) Evidence of compliance referred to in clause *e* of subsection 1, where it arises under a covenant, condition or other requirement of the trust indenture shall be in accordance with the report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him in accordance with the trust indenture, but if such report or opinion is provided by a director, officer or employee of the issuer or guarantor it shall be in the form of a statutory declaration.

Idem

(4) Evidence of compliance referred to in clause *e* of subsection 1, where it is required by the trustee to be furnished to him in the exercise of his rights and duties under the trust indenture shall be, so far as appropriate, in accordance with subsections 2 and 3.

Idem

(5) The evidence required under subsections 2, 3 and 4 shall include,



- (a) a statement by the person giving the evidence that he has read and is familiar with the provisions of the trust indenture under which it is required;
- (b) a brief statement of the nature and scope of the examination or investigation upon which the statements or opinions contained in the evidence are based;
- (c) a statement that, in the belief of the person giving the evidence, he has made such examination or investigation as is necessary to enable him to express an opinion whether the provisions of the trust indenture under which it is required have been complied with or satisfied; and
- (d) a statement whether in the opinion of such person the provisions of the trust indenture have been complied with or satisfied.

(6) The issuer or guarantor of debt obligations under the trust indenture shall furnish the trustee annually, and at any other time if the trustee so requires, a certificate that the issuer or guarantor has complied with all covenants, conditions or other requirements contained in the trust indenture that would, with the elapse of time or otherwise, constitute an event of default thereunder. Certificate of issuer or guarantor

(7) Nothing in this section prevents the inclusion in a trust indenture of provisions requiring evidence of compliance with covenants, conditions or other requirements in addition to those specified in this section. *New.* Additional provisions

**60.** Except as provided in paragraphs 1 and 2 of subsection 1 of section 58, a trust indenture to which section 58 applies shall not contain any provision relieving the trustee from liability arising thereunder. *New.* Exculpatory clauses

**61.** A trustee under a trust indenture to which section 58 applies and any related person to such trustee shall not be appointed a receiver or receiver and manager or liquidator of the assets or undertaking of the issuer or guarantor of the debt obligations under the trust indenture. *New.* Trustees under trust indentures not to be appointed receivers, etc.

**62.** Sections 58, 59 and 60 apply to any trust indenture entered into after those sections come into force, or entered into before those sections come into force and under which debt obligations are outstanding or may be issued when those sections come into force. *New.* Application of sections 58-60

## INVESTMENT SECURITIES

*General*Interpre-  
tation**63.**—(1) In this section and in sections 64 to 97,

(a) “adverse claim” includes a claim that a transfer is or would be unauthorized or wrongful or that a particular adverse person is the owner of or has an interest in the security;

(b) “appropriate person”, when used to refer to a person endorsing a security, means,

(i) the person specified by the security or by special endorsement to be entitled to the security,

(ii) where the person so specified is described as a trustee or other fiduciary but is no longer serving in that capacity and notwithstanding that a successor has been appointed or qualified,

a. where only one person is so described, that person or his successor, or

b. where more than one person is so described, the remaining persons,

(iii) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise, his executor, administrator, committee, guardian or like fiduciary,

(iv) where the security or endorsement specified more than one person as joint tenants or with right of survivorship and by reason of death all cannot sign, the survivor or survivors,

(v) a person having the power to sign under the applicable law or controlling instrument, or

(vi) to the extent any of the foregoing persons may act through an agent, his authorized agent;

(c) “bearer form” when applied to a security means a security that runs to bearer according to its terms and not by reason of any endorsement;

- (d) "broker" means a person engaged for all or part of his time in the business of buying and selling securities, who holds registration as a broker or in a similar capacity under *The Securities Act, 1966*, or who is recognized for the purpose of sections 64 to 97 by the Commission as a broker, and who in the transaction concerned acts for or buys a security from or sells a security to a customer; 1966, c. 142
- (e) "clearing corporation" means a body corporate recognized as a clearing corporation by the Commission;
- (f) "custodian" means a bank to which the *Bank Act* (Canada) applies, a trust company registered under *The Loan and Trust Corporations Act* or such other body corporate as may be recognized by the Commission as a custodian and which is acting as custodian for a clearing corporation; 1966-67, c. 87 (Can.)  
R.S.O. 1960, c. 222
- (g) "proper form" means regular on its face with regard to all formal matters;
- (h) "registered form" when applied to a security means a security that is not in bearer form and that specifies a person entitled to the security or the rights it evidences;
- (i) "security" means a security as defined in section 1 and includes a warrant.

(2) Sections 64 to 97 do not apply to a promissory note or bill of exchange to which the *Bills of Exchange Act* (Canada) applies. *New.* Application of ss. 64-97  
R.S.C. 1952, c. 15 (Can.)

**64.** A lien upon a security in favour of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security. *New.* Issuer's  
liens

**65.—(1)** In this section, "overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue. Overissue

(2) The provisions of this Act that validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue, but,

- (a) if an identical security that does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the

issuer to purchase and deliver such a security to him against surrender of the security, if any, that he holds; or

- (b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand. *New.*

#### Evidence

### 66. In any action on a security,

- (a) unless specifically denied in the pleadings, each signature on the security or in a necessary endorsement is admitted;
- (b) where the effectiveness of a signature is put in issue, the burden of establishing its effectiveness is on the party claiming under the signature, but the signature is *prima facie* proof that it is genuine and authorized;
- (c) where signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defence or a defect going to the validity of the security; and
- (d) after it is shown that a defence or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defence or defect is ineffective. *New.*

#### Selection of laws

**67.**—(1) The validity of a security and the rights and duties with respect to registration of transfer of an issuer that is a corporation or a body corporate incorporated under the laws of Ontario are governed by this Act and the laws of Ontario.

#### Idem

(2) The validity of a security and the rights and duties with respect to registration of transfer of an issuer that is a body corporate other than a corporation or a body corporate under the laws of Ontario, are governed by the law, including the conflict of law rules, of the jurisdiction in which the body corporate was incorporated. *New.*

#### Form of transfer

**68.**—(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him in blank or to bearer.



(2) Where the buyer fails to pay the price as it comes due <sup>Default in payment</sup> under a contract of sale, the seller may recover the price,

- (a) of any security accepted by the buyer; and
- (b) if a security is not accepted by the buyer and its resale would be unduly burdensome or there is no readily available market. *New.*

*Rights and Liabilities of Issuer,  
Registrar and Transfer Agent*

**69.**—(1) The obligations and defences of an issuer apply <sup>Issuer</sup> to a body corporate that,

- (a) places or authorizes the placing of its name on a security, otherwise than as an authenticating trustee, registrar or transfer agent, to evidence that it represents a share, participation or other interest in its property or in an enterprise or to evidence its duty to perform an obligation evidenced by the security;
- (b) directly or indirectly creates fractional interests in its rights or property which fractional interests are evidenced by securities; or
- (c) becomes responsible for or in place of any other person described as an issuer in this section.

(2) The obligations and defences of an issuer apply to a <sup>Guarantor</sup> guarantor of a security to the extent of his guaranty whether or not his obligation is noted on the security.

(3) The person on whose behalf a register of transfers is <sup>Person maintaining transfer books</sup> maintained is an issuer for the purposes of the registration of a transfer under sections 92 to 95. *New.*

**70.**—(1) A purchaser for value shall be deemed to have <sup>Notice of terms on security</sup> notice of the terms of a security including those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a statute, ordinance, rule, regulation, order or other written law to the extent that the terms so referred to do not conflict with the stated terms, except that he shall be deemed not to have such notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) Except as otherwise provided in the case of certain <sup>Defence of issuer</sup> unauthorized signatures on issue, lack of genuineness of a security is a complete defence even against a purchaser for value and without notice.

Idem

(3) All other defences of the issuer including non-delivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defence.

Idem

(4) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement under which such security is to be issued or distributed. *New.*

Notice of defect

**71.**—(1) After an act or event that creates a right to immediate performance of the principal obligation evidenced by the security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or any defence of the issuer,

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not one to which clause *a* applies and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

Revoked call for redemption excepted

(2) Subsection 1 does not apply to a call for redemption that has been revoked. *New.*

Restriction on transfer

**72.**—(1) Unless noted conspicuously on the security, a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

Exception for securities of former private companies R.S.O. 1960, c. 71

(2) Where a corporation was incorporated as a private company under *The Corporations Act*, or any predecessor thereof, before this Act comes into force, the words "private company" appearing conspicuously on the face of its securities issued before this section comes into force shall be deemed to be notice of its restriction on the transfer of the securities for the purposes of subsection 1. *New.*

Unauthorized signatures on issue

**73.** An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favour of a purchaser for value and

without notice of the lack of authority if the signing has been done by,

- (a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or
- (b) an employee of the issuer, entrusted with responsibility for handling of the security. *New.*

**74.**—(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect, Completion of blanks

- (a) any person may complete it by filling in the blanks as authorized; and
- (b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security that has been improperly altered, Improper alteration even though fraudulently, remains enforceable but only according to its original terms. *New.*

**75.**—(1) Subject to sections 106 and 112, the issuer or the indenture trustee may treat the registered holder as the person entitled to receive notice of and to vote at meetings of the security holders and to receive any payment in respect of the security and otherwise to exercise all the rights and powers of an owner. R.S.O. 1960, c. 71, s. 47 (2), *amended.* Effect of registration

(2) Nothing in sections 64 to 97 shall be construed to affect Idem the liability of the registered owner of a security for calls, assessments or similar liabilities. *New.*

**76.**—(1) A body corporate placing its signature upon a security as authenticating trustee, registrar or transfer agent warrants to a purchaser for value without notice of the particular defect that, Warranties on issue

- (a) the security is genuine and in proper form;
- (b) its own participation in the issue of the security is within its capacity and within the scope of the authorization received by it from the issuer; and
- (c) it has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

*Idem* (2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects. *New.*

*Rights and Liabilities of Purchaser and Seller*

*Rights acquired by purchasers* **77.**—(1) Upon delivery of a security, the purchaser acquires the rights in the security that his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later purchaser for value in good faith who was without notice of any adverse claim.

*bona fide purchaser* (2) A purchaser for value in good faith and without notice of any adverse claim in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

*Limited interest* (3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased. *New.*

*Notice of adverse claims* **78.**—(1) A purchaser, including a broker for the seller or buyer, of a security is charged with notice of adverse claims if,

- (a) the security whether in bearer or registered form has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
- (b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on a security shall not be deemed such a statement.

*Idem* (2) The fact that the purchaser, including a broker for the seller or the buyer, has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims, but if the purchaser has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

*Idem* (3) An act or event that creates a right to immediate performance of the principal obligation evidenced by the security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase,



- (a) after one year from any date set for such presentment or surrender for redemption or exchange; or
- (b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date. *New.*

**79.**—(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange, but a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature in a necessary endorsement.

(2) A person by transferring a security to a purchaser for value warrants only that,

- (a) his transfer is effective and rightful;
- (b) the security is genuine and has not been materially altered; and
- (c) he knows no fact that might impair the validity of the security.

(3) Where a security is delivered by an intermediary known by the transferee to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery, but a broker is not an intermediary within the meaning of this subsection.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection 3.

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section and the warranties of and in favour of the broker acting as an agent are in addition to applicable warranties given by and in favour of his customer. *New.*

Absence of  
endorsement

**80.** Where a security in registered form has been delivered to a purchaser without a necessary endorsement, he may become a purchaser for value in good faith and without notice of any adverse claim only as of the time the endorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied. *New.*

Endorse-  
ment

**81.**—(1) An endorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

Idem

(2) An endorsement of a security may be,

(a) in blank, including to bearer; or

(b) a special endorsement, specifying the person to whom the security is to be transferred or who has the power to transfer it,

and a holder may convert an endorsement in blank into a special endorsement.

Obligations  
of endorser

(3) Unless otherwise agreed, the endorser by his endorsement assumes no obligation that the security will be honoured by the issuer.

Partial  
endorsement

(4) An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

Appropriate  
person

(5) Whether the person signing is appropriate shall be determined as of the date of signing and an endorsement by such person does not become unauthorized for the purposes of this Act by virtue of any subsequent change of circumstances.

Improper  
endorsement  
by fiduciary

(6) Failure of a fiduciary to comply with a controlling instrument or with the law applicable to the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his endorsement unauthorized for the purposes of this Act. *New.*

Delivery  
necessary

**82.** An endorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears, or if the endorsement is on a separate document until the delivery of both the document and the security. *New.*

**83.** Unless the owner has ratified an unauthorized endorsement or is otherwise precluded from asserting its ineffectiveness, Effect of unauthorized endorsement

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered security on registration of transfer; and

(b) an issuer who registers the transfer of a security upon the unauthorized endorsement is subject to liability for improper registration. *New.*

**84.—**(1) Any person guaranteeing a signature of an endorser of a security warrants that at the time of signing, Guarantee of signature

(a) the signature was genuine;

(b) the signer was an appropriate person to endorse; and

(c) the signer had legal capacity to sign,

but the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an endorsement of a security and by so doing warrants not only the signature but also the rightfulness of the particular transfer in all respects. Guarantee of endorsement

(3) No issuer may require a guarantee of endorsement as a condition to registration of transfer. Idem

(4) The warranties referred to in subsections 1 and 2 are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties. Liability of guarantor  
*New.*

**85.—**(1) Delivery to a purchaser occurs when, What constitutes delivery

(a) he or a person designated by him acquires possession of a security;

(b) his broker acquires possession of a security specially endorsed or issued in the name of the purchaser;

(c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser;

- (d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or
- (e) appropriate entries in the records of a clearing corporation are made under section 91.

*Idem*

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in clauses *b*, *c* and *e* of subsection 1, but where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

Notice of  
adverse  
claim  
after  
delivery

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser, but as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.  
*New.*

Duty of  
seller to  
deliver

**86.**—(1) Unless otherwise agreed where a sale of a security is made on a stock exchange recognized for the purposes of sections 64 to 97 by the Commission or otherwise through brokers,

- (a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or, if requested, causes an acknowledgment to be made to the selling broker that it is held for him; and
- (b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the recognized stock exchange on which the transaction took place.

*Idem*

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him.



(3) Subsection 2 applies to a sale to a broker purchasing <sup>Idem</sup> on his own account unless the sale is made on a recognized stock exchange. *New.*

**87.**—(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, <sup>Action for wrongful transfer</sup> may against anyone else except a purchaser for value in good faith and without notice of any adverse claim reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized <sup>Idem</sup> endorsement the owner may also reclaim or obtain possession of the security even from a purchaser for value in good faith and without notice of any adverse claim if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this Act relating to unauthorized endorsements.

(3) The right to obtain or reclaim possession of a security <sup>Specific performance and injunction</sup> may be specially enforced by specific performance or its transfer enjoined. *New.*

**88.**—(1) Unless otherwise agreed, the transferor shall on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite that may be necessary to obtain registration of the transfer of the security, but <sup>Transferor's duty to provide requisites for registration of transfer</sup> if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses.

(2) Failure to comply with a demand made under subsection 1 within a reasonable time gives the purchaser the right <sup>Effect of failure</sup> to reject or rescind the transfer. *New.*

**89.** An agent or bailee who in good faith, including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities, has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal has no right to dispose of them. *New.* <sup>Transfer by agent in good faith not conversion</sup>

**90.** A contract for the sale of securities is not enforceable <sup>Contract for sale</sup> by way of action or defence unless,

- (a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

- (b) delivery of the security has been accepted or payment has been made, but the contract is enforceable under this provision only to the extent of such delivery or payment;
- (c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under clause *a* has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within a reasonable time after its receipt; or
- (d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

Transfer  
through  
clearing  
corporation

**91.—(1)** If a security,

- (a) is in the custody of a clearing corporation or of a custodian or nominee of either, subject to the instructions of the clearing corporation;
- (b) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian or a nominee of either; and
- (c) is shown on the account of a transferor or pledgor in the records of the clearing corporation,

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries in the records of the clearing corporation, reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

Interests in  
fungible  
bulk

(2) Under this section entries may be in respect of like securities or interests therein as part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

Construc-  
tive en-  
dorsement  
and  
delivery

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank representing the amount of the obligation or the number of shares or rights transferred or pledged.

(4) If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party. <sup>Idem</sup>

(5) A transferee or pledgee under this section is a holder. <sup>Holder</sup>

(6) A transfer or pledge under this section does not constitute a registration of transfer under sections 92 to 96. <sup>Not registration</sup>

(7) That entries made in the records of the clearing corporation as provided in subsection 1 are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby. *New.* <sup>Error in records</sup>

### *Registration*

**92.**—(1) Where a security in registered form is presented to the issuer with a request to register a transfer, the issuer is under a duty to register the transfer as requested if, <sup>Duty of issuer to register transfer</sup>

- (a) the security is endorsed by the appropriate person or persons;
- (b) reasonable assurance is given that those endorsements are genuine and effective;
- (c) the issuer has no notice of an adverse claim;
- (d) any applicable law relating to the collection of taxes has been complied with; and
- (e) the transfer is not contrary to applicable restrictions or is not of a share in respect of which the corporation is entitled to a lien and exercises its right to refuse registration.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer. *New.* <sup>Liability for undue delay</sup>

**93.**—(1) For the purpose of obtaining reasonable assurance that each necessary endorsement required by section 81 is genuine and effective, the issuer may require a guarantee of the signature of the person endorsing or, where such guarantee is lacking, <sup>Assurances required by issuer</sup>

- (a) where the endorsement is by an agent, appropriate assurance of authority to sign;

- (b) where the endorsement is by fiduciary, or a successor on whom title or control vests on the death of the holder, appropriate evidence of appointment or incumbency;
- (c) where there is more than one fiduciary or successor, reasonable assurance that all who are required to sign have done so; and
- (d) where the endorsement is by a person not covered by a person mentioned in this section, assurance appropriate to the case equivalent as nearly as may be to those required by this section.

Sufficiency  
of guarantee

(2) A "guarantee of the signature" in subsection 1 means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible, and the issuer may adopt standards with respect to responsibility if such standards are not manifestly unreasonable. *New.*

Appropriate  
evidence of  
appoint-  
ment or  
incumbency

(3) For the purposes of subsection 1, "appropriate evidence of appointment or incumbency" means,

- (a) if the fiduciary or successor claims by virtue of a grant of probate or letters of administration or other instrument issued or purporting to be issued by a court or other judicial authority in any jurisdiction, production of the same or a notarial copy thereof or extract therefrom or a certificate of such grant under the seal of such court or other authority without any proof of the authenticity of such seal or other proof whatever and deposit of a copy thereof;
- (b) if the fiduciary or successor claims by virtue of the laws of any jurisdiction in which any transmission or vesting of title or control takes place without a grant of probate or letters of administration or other court or judicial action, production and deposit of proof thereof in accordance with the laws of such jurisdiction and reasonable evidence of such laws; or
- (c) if the net value of the estate of the deceased holder is less than \$1,500 or if the market value of the shares or securities is less than \$300, proof thereof to the reasonable satisfaction of the issuer,

together with, in any such event, production and deposit by one or more of the fiduciaries or successors of a sworn statement showing the nature of the transmission or vesting of title or control, as the case may be. R.S.O. 1960, c. 71, s. 52, *amended.*



(4) The issuer is not charged with notice of the contents of any document obtained for the purposes of subsection 3 except to the extent that the contents relate directly to the appointment or incumbency. *New.*

**94.**—(1) An issuer to whom a security is presented for registration has notice of an adverse claim if, Other contents not notice  
Notice to issuer of adverse claims

- (a) the issuer receives written notice of the adverse claim evidenced by an order or judgment of a court of competent jurisdiction and the notice is received at a time and in a manner that affords the issuer a reasonable opportunity to act on it before the issuance of a new, reissued or reregistered security and the notification identifies the registered owner, the claimant and the issue of which the security is a part, and provides an address for communications directed to the claimant; or
- (b) the issuer is given written notice by the registered owner that the security is lost, apparently destroyed or wrongfully taken.

(2) An issuer shall not be deemed to have notice of an adverse claim otherwise than as provided in subsection 1. Idem

(3) The issuer may register a transfer where he has notice of an adverse claim if he has given notice to both the registered owner and the claimant by registered mail to the address provided by them for the purpose that the security has been presented for registration by a named person and that the transfer will be registered unless prior to the expiration of thirty days from the date of mailing the notification there is filed with the issuer, Registration after notice

- (a) an appropriate restraining order, injunction or other process issued from a court of competent jurisdiction; or
- (b) an indemnity bond sufficient in the issuer's opinion to protect the issuer and any transfer agent, registrar or other agent of the issuer from any loss which it or they may suffer by complying with the adverse claim. *New.*

**95.**—(1) The issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if, Liability of issuer

- (a) there were on or with the security the necessary endorsements; and

- (b) the issuer had not notice of adverse claims or, having had notice thereof, proceeded to register the transfer in accordance with subsection 3 of section 94.

Idem

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless,

- (a) the registration was pursuant to subsection 1;
- (b) the owner is precluded from asserting any claim for registering the transfer under subsection 1 of section 96; or
- (c) such delivery would result in overissue, in which case the issuer's liability is governed by section 65. *New.*

Lost, etc.,  
securities

**96.**—(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact in writing before the issuer registers a transfer of the security, the owner is precluded from asserting against the issuer any claim for registering the transfer under section 95 or any claim to a new security under this section.

Replacing  
lost, etc.,  
securities

(2) Where the owner of a security claims that the security has been lost, apparently destroyed or wrongfully taken, the issuer shall issue a new security in place of the original security if the owner,

- (a) so requests before the issuer has notice that the security has been acquired by a purchaser for value without notice of an adverse claim;
- (b) files with the issuer an indemnity bond sufficient in the issuer's opinion to protect the issuer and any transfer agent, registrar or other agent of the issuer from any loss that it or they may suffer by complying with the request to issue a new security;
- (c) satisfies any other reasonable requirements imposed by the issuer.

Rights of  
*bona fide*  
purchaser

(3) If, after the issue of the new security, a purchaser for value without notice of an adverse claim of the original security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue in which event the issuer's liability is governed by section 65.

Rights of  
issuer

(4) In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom

it was issued or any person taking under him except a purchaser for value without notice of an adverse claim. *New.*

**97.**—(1) A person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities is under a duty to exercise good faith and due diligence in performing his functions. Duty of agents for issuer

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent. *New.* Notice to agents for issuer

## SHAREHOLDERS

### *Rights*

**98.**—(1) Where a person is shown on the records of a corporation as holding a share as a personal representative, the receipt by such person is a valid and binding discharge to the corporation for any payment made in respect of the share whether notice of any trust has been given to the corporation or not, and the corporation is not bound to see to the application of the money paid to him. R.S.O. 1960, c. 71, s. 47 (2, 3), *amended.* Dealings by corporation with personal representatives

(2) Where shares are purchased by a corporation under subsection 1 of section 39 or subsection 2 of section 100 or accepted by a corporation under subsection 3 of section 38 or section 43 and are not thereby cancelled, no person is entitled to receive notice of or to vote at meetings of shareholders or to receive any payment in respect of the shares whether by way of dividend or otherwise until such shares are resold. *New.* Corporation not a shareholder of own shares

**99.**—(1) Subject to subsection 2, a shareholder of a corporation may maintain an action in a representative capacity for himself and all other shareholders of the corporation suing for and on behalf of the corporation to enforce any right, duty or obligation owed to the corporation under this Act or under any other statute or rule of law or equity that could be enforced by the corporation itself, or to obtain damages for any breach of any such right, duty or obligation. Representative actions on behalf of corporation

(2) An action under subsection 1 shall not be commenced until the shareholder has obtained an order of the court permitting the shareholder to commence the action. Leave

(3) A shareholder may, upon at least seven days notice to the corporation, apply to the court for an order referred to in subsection 2, and, if the court is satisfied that, Application for order to commence action



- (a) the shareholder was a shareholder of the corporation at the time of the transaction or other event giving rise to the cause of action;
- (b) the shareholder has made reasonable efforts to cause the corporation to commence or prosecute diligently the action on its own behalf; and
- (c) the shareholder is acting in good faith and it is *prima facie* in the interests of the corporation or its shareholders that the action be commenced,

the court may make the order upon such terms as the court thinks fit, except that the order shall not require the shareholder to give security for costs.

Application  
for order  
for interim  
costs

(4) At any time or from time to time while an action commenced under this section is pending, the plaintiff may apply to the court for an order for the payment to the plaintiff by the corporation of reasonable interim costs, including solicitor's and counsel fees and disbursements, for which interim costs the plaintiff shall be accountable to the corporation if the action is dismissed with costs on final disposition at the trial or on appeal.

Trial and  
judgment

(5) An action commenced under this section shall be tried by the court and its judgment or order in the cause, unless the action is dismissed with costs, may include a provision that the reasonable costs of the action are payable to the plaintiff by the corporation or other defendants taxed as between a solicitor and his own client.

Discon-  
tinuance  
and  
settlement

(6) An action commenced under this section shall not be discontinued, settled or dismissed for want of prosecution without the approval of the court and, if the court determines that the interests of the shareholders or any class thereof may be substantially affected by such discontinuance, settlement or dismissal, the court, in its discretion, may direct that notice in manner, form and content satisfactory to the court shall be given, at the expense of the corporation or any other party to the action as the court directs, to the shareholders or class thereof whose interests the court determines will be so affected.

*New.*

Rights of  
dissenting  
shareholders

**100.**—(1) If, at a meeting of shareholders or of any class of shareholders of a corporation that is not offering its shares to the public,

- (a) a resolution passed by the directors authorizing the sale, lease, exchange or other disposition of the undertaking of the corporation or any part thereof as an



entirety or substantially as an entirety is confirmed with or without variation by the shareholders;

- (b) a resolution passed by the directors authorizing an amendment to the articles to delete therefrom a provision restricting the transfer of the shares of the corporation or of any class thereof is confirmed with or without variation by the shareholders; or
- (c) a resolution approving an agreement for the amalgamation of the corporation with one or more other corporations, is confirmed by the shareholders,

any shareholder who has voted against the confirmation of the resolution may within ten days after the date of the meeting give notice in writing to the corporation requiring it to purchase his shares.

(2) Within ninety days from the date of the completion of the sale or disposition or the issue of the certificate of amendment or amalgamation, as the case may be, the corporation, or amalgamated corporation, as the case may be, shall purchase the shares of every shareholder who has given notice under subsection 1, and every such shareholder shall sell his shares to the corporation. Corporation bound to purchase shares

(3) The corporation shall not purchase any shares under subsection 2 if it is insolvent or if the purchase would render it insolvent. Saving

(4) The price and terms of the purchase of such shares shall be as may be agreed upon by the corporation and the dissenting shareholder, but, if they fail to agree, the price and terms shall be as determined by the court on the application of the dissenting shareholder. Price of shares

(5) Any shares purchased under subsection 2 shall not be cancelled by reason only of such purchase and the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. Sale of shares

(6) If the sale or disposition is not completed or the certificate of amendment or amalgamation is not issued, the rights of the dissenting shareholder under this section cease and the corporation shall not purchase the shares of such shareholder under this section. R.S.O. 1960, c. 71, s. 99, *amended*. Where sale not completed

Requisition  
for by-law  
or  
resolution

**101.**—(1) The persons holding equity shares carrying at least 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding may requisition the directors to call a meeting of the directors for the purpose of passing any by-law or resolution that may properly be passed at a meeting of the directors duly called, constituted and held for that purpose.

Form of  
requisition

(2) The requisition shall set out the by-law or resolution, as the case may be, that is required to be passed at the meeting and shall be signed by the requisitionists and deposited at the head office of the corporation, and may consist of several documents in like form, each signed by one or more requisitionists.

Meeting of  
directors

(3) Upon deposit of the requisition, the directors shall forthwith call a meeting of the directors for the purpose of passing the by-law or resolution, as the case may be, set out in the requisition.

Meeting of  
shareholders

(4) Where the directors do not within twenty-one days from the date of the deposit of the requisition call and hold such a meeting and pass such a by-law or resolution and, where the by-law or resolution requires confirmation at a general meeting of the shareholders, call a general meeting of the shareholders for the purpose of confirming the by-law or resolution, any of the requisitionists may call a general meeting of the shareholders for the purpose of passing such by-law or resolution, and the meeting shall be held within sixty days from the date of the deposit of the requisition.

Notice

(5) A meeting of the shareholders called under subsection 4 shall be called as nearly as possible in the same manner as meetings of shareholders are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.

Validity of  
by-law or  
resolution

(6) Where a by-law or resolution is passed at a meeting of the shareholders called under subsection 4, either as set out in the requisition or as varied at the meeting, it is as valid and effective as if it had been passed at a meeting of the directors duly called, constituted and held for that purpose and confirmed at a meeting of the shareholders duly called, constituted and held for that purpose, and, if the resolution or by-law is passed by at least two-thirds of the votes cast at the meeting of the shareholders called under subsection 4, it shall be conclusively deemed to be a special resolution or special by-law, as the case may be, for the purposes of this Act.

(7) The corporation shall,

Repayment  
of expenses

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the failure of the directors to act in accordance with subsections 3 and 4; and
- (b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting called under subsection 4, the shareholders, by a majority of the votes cast, reject the reimbursement of the requisitionists.

(8) Where a by-law or resolution in respect of which a meeting is required by requisition under this section is not passed at the meeting, no requisition for a meeting in respect of a similar by-law or resolution shall be made for a period of at least two years. *New.*

New  
requisition  
on same  
subject

**102.**—(1) On the requisition in writing of the persons holding equity shares carrying at least 5 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, the directors shall,

Circulation  
of share-  
holders'  
resolutions,  
etc.

- (a) give to the shareholders entitled to notice of the next meeting of shareholders notice of any resolution that may properly be moved and is intended to be moved at that meeting; or
- (b) circulate to the shareholders entitled to vote at the next meeting of shareholders a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or with respect to the business to be dealt with at that meeting.

(2) The notice or statement or both, as the case may be, shall be given or circulated by sending a copy thereof to each shareholder entitled thereto in the same manner and at the same time as that prescribed by this Act, the articles or the by-laws, for the sending of notice of meetings of shareholders.

Notice

(3) Where it is not practicable to send the notice or statement or both at the same time as the notice of the meeting is sent, the notice or statement or both shall be sent as soon as practicable thereafter.

Idem

(4) The directors are not bound under this section to give notice of any resolution or to circulate any statement unless,

Deposit of  
requisition,  
etc.

(a) the requisition, signed by the requisitionists, is deposited at the head office of the corporation,

(i) in the case of a requisition requiring notice of a resolution to be given, not less than twenty-one days before the meeting where the corporation is offering its securities to the public and not less than ten days before the meeting where the corporation is not offering its securities to the public,

(ii) in the case of a requisition requiring a statement to be circulated, not less than fourteen days before the meeting where the corporation is offering its securities to the public and not less than seven days before the meeting where the corporation is not offering its securities to the public; and

(b) there is deposited with the requisition a sum reasonably sufficient to meet the expenses of the corporation in giving effect thereto.

Where  
directors  
not bound  
to circulate  
statement

(5) The directors are not bound under this section to circulate any statement if, on the application of the corporation or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and on any such application the court may order the costs of the corporation to be paid in whole or in part by the requisitionists notwithstanding that they are not parties to the application.

Where no  
liability

(6) No corporation or a director, officer or employee thereof or person acting on its behalf, except a requisitionist, is liable in damages or otherwise by reason only of the giving of a notice or the circulation of a statement, or both, in compliance with this section.

Duty to  
deal with  
requisitioned  
matter

(7) Notwithstanding anything in the by-laws of the corporation, where the requisitionists have complied with this section, the resolution, if any, mentioned in the requisition shall be dealt with at the meeting to which the requisition relates.

Repayment  
of expenses

(8) The corporation shall pay to the requisitionists the sum deposited under clause *b* of subsection 4 unless at the meeting to which the requisition relates the shareholders by a majority of the votes cast reject the repayment to the requisitionists. R.S.O. 1960, c. 71, s. 309 (1-8), *amended*.



*Liabilities*

**103.**—(1) Where the issued capital of a corporation is decreased by an amendment to the articles, each person who was a shareholder on the effective date of the amendment is individually liable to the creditors of the corporation for the debts due on that date to an amount not exceeding the amount of the repayment to him. Liability on decrease of issued capital

(2) A person is not liable under subsection 1 unless, Limitation of liability

(a) the corporation has been sued for the debt within six months after the effective date of the amendment and execution has been returned unsatisfied in whole or in part; and

(b) he is sued for the debt in a court of competent jurisdiction within two years from the effective date of the amendment.

(3) After execution has been so returned, the amount due on the execution, not exceeding the amount of the repayment to the person, is the amount recoverable against such person. Idem

(4) Where it is made to appear that there are numerous shareholders who may be liable under this section, the court of competent jurisdiction may permit an action to be brought against one or more of them as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such shareholders as may be found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined. Class actions

(5) No person holding shares in the capacity of a personal representative and registered on the records of the corporation as a shareholder and therein described as representing in such capacity a named estate, person or trust is personally liable under this section, but the estate, person or trust is subject to all liabilities imposed by this section. R.S.O. 1960, c. 71, s. 36, *amended*. Shareholder holding shares in fiduciary capacity

**104.** A shareholder of a corporation as such is not answerable or responsible for any act, default, obligation or liability of the corporation, or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the corporation. R.S.O. 1960, c. 71, s. 55 (1), *amended*. Shareholder's liability limited

*Meetings*Place of  
meetings

**105.**—(1) Subject to subsections 2 and 3, the meetings of the shareholders shall be held at the place where the head office of the corporation is located.

Exception

(2) Where the by-laws of the corporation so provide, the meetings of the shareholders may be held at any place within Ontario.

Idem

(3) Where the articles of the corporation so provide, the meetings of the shareholders may be held at one or more places outside Ontario specified therein. R.S.O. 1960, c. 71, s. 74 (1-3), *amended*.

Share-  
holders'  
meetings

**106.**—(1) Subject to subsection 2 and in the absence of other provisions in that behalf in the articles or by-laws of the corporation,

(a) notice of the time and place for holding a meeting of the shareholders shall be given to each person who is entitled to notice of meetings and who on the record date for notice, appears on the records of the corporation as a shareholder by sending the notice by prepaid mail to his latest address as shown on the records of the corporation,

(i) in the case of a corporation that is offering its securities to the public, twenty-one days or more before the date of the meeting, and

(ii) in the case of a corporation that is not offering its securities to the public, ten days or more before the date of the meeting,

but in no case more than fifty days before the date of the meeting;

(b) all questions proposed for the consideration of the shareholders at a meeting of shareholders shall be determined by the majority of the votes cast, and the chairman presiding at the meeting has a second or casting vote in case of an equality of votes;

(c) the chairman presiding at a meeting of shareholders may, with the consent of the meeting and subject to such conditions as the meeting decides, adjourn the meeting from time to time and from place to place;

(d) the president or, in his absence, a vice-president who is a director shall preside as chairman at a meeting of shareholders, but, if there is no president

or such a vice-president or if at a meeting neither of them is present within fifteen minutes after the time appointed for the holding of the meeting, the shareholders present shall choose a person from their number to be the chairman;

- (e) unless a poll is demanded, an entry in the minutes of a meeting of shareholders to the effect that the chairman declared a motion to be carried is admissible in evidence as *prima facie* proof of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

(2) The articles or by-laws of the corporation shall not <sup>Notice</sup> provide for fewer than,

- (a) twenty-one days notice in the case of a corporation that is offering its securities to the public, or  
(b) ten days notice in the case of a corporation that is not offering its securities to the public,

for meetings of shareholders but in no case shall notice be given more than fifty days before the date of the meeting and the articles or by-laws shall not provide that notice may be given otherwise than individually.

(3) If a poll is demanded, it shall be taken in such manner <sup>Poll</sup> as the by-laws prescribe, and, if the by-laws make no provision therefor, then as the chairman directs. R.S.O. 1960, c. 71, s. 79, *amended*.

**107.** A corporation shall hold an annual meeting of its <sup>Annual meetings</sup> shareholders not later than eighteen months after its incorporation and subsequently not more than fifteen months after the holding of the last preceding annual meeting and at such meeting any shareholder shall have an opportunity to raise any matter relevant to the affairs and business of the corporation. R.S.O. 1960, c. 71, s. 306, *amended*.

**108.** The directors may at any time call a general meeting <sup>General meetings</sup> of the shareholders for the transaction of any business, the general nature of which is specified in the notice calling the meeting. R.S.O. 1960, c. 71, s. 307.

**109.**—(1) The persons holding equity shares carrying at least 5 per cent of the voting rights attached to all equity <sup>Requisition for shareholders' meeting</sup> shares of the corporation for the time being outstanding may requisition the directors to call a general meeting of the shareholders for any purpose that is connected with the affairs of the corporation and that is not inconsistent with this Act.

## Requisition

(2) The requisition shall state the general nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the head office of the corporation and may consist of several documents in like form, each signed by one or more requisitionists.

## Duty of directors to call meeting

(3) Upon deposit of the requisition, the directors shall forthwith call a general meeting of the shareholders for the transaction of the business stated in the requisition.

## Where requisitionists may call meeting

(4) If the directors do not within thirty days from the date of the deposit of the requisition call and hold the meeting, any of the requisitionists may call the meeting, which shall be held within sixty days from the date of the deposit of the requisition.

## Calling of meeting

(5) A meeting called under this section shall be called as nearly as possible in the same manner as meetings of shareholders are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.

## Repayment of expenses

(6) The corporation shall,

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the action taken by them under subsection 4; and
- (b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,


unless, at the meeting, the shareholders by a majority of the votes cast reject the reimbursement of the requisitionists. R.S.O. 1960, c. 71, s. 308, *amended*.

## Idem, on court order


**110.** Notwithstanding section 109, upon application by a shareholder of a corporation, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the corporation or its shareholders that the meeting be held on requisition, may make an order, upon such terms as to security for the costs of holding the meeting or otherwise as to the court seem fit, requiring the directors to call a general meeting of the shareholders for any purpose that is connected with the affairs of the corporation and that is not inconsistent with this Act. *New.*



**111.** If for any reason it is impracticable to call a meeting of shareholders of a corporation in any manner in which meetings of shareholders may be called or to conduct the meeting in the manner prescribed by this Act, the articles or by-laws, the court may, on the application of a director or a shareholder who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the court thinks fit, and any meeting called, held and conducted in accordance with the order shall for all purposes be deemed to be a meeting of shareholders of the corporation duly called, held and conducted. R.S.O. 1960, c. 71, s. 310, *amended*. Court may direct method of holding meetings

 **112.**—(1) The by-laws may provide for the fixing in advance of a date as the record date, Record dates

(a) for the determination of the shareholders entitled to notice of meetings of the shareholders which record date for notice shall not be more than fifty days before the date of the meeting and not fewer than the minimum number of days for notice of the meeting and where no such record date for notice is fixed by by-law, the record date for notice shall be at the close of business on the day next preceding the day on which notice is given or sent; and

(b) for the determination of the shareholders entitled to vote at meetings of the shareholders, which record date for voting shall be not more than forty-eight hours, excluding Saturdays and holidays, before the date of the meeting and where no such record date for voting is fixed by by-law, the record date for voting shall be at the time of the taking of the vote. *New.* 

(2) The holder of each common share and, unless the articles condition, restrict, limit or prohibit the right to vote, the holder of each special share who, on the record date for voting, appears on the records of the corporation as a shareholder is entitled to one vote for each share held by him at all meetings of the shareholders of the corporation, or such greater number of votes for each share respecting such matters as the articles provided. R.S.O. 1960, c. 71, s. 29, *amended*. Voting rights

**113.**—(1) Where a person holds shares as a personal representative, that person or his proxy is the person entitled to vote at all meetings of shareholders in respect of the shares so held by him. Personal representative

Mortgagee,  
etc.

(2) Where a person mortgages or hypothecates his shares, that person or his proxy is the person entitled to vote at all meetings of shareholders in respect of such shares unless, in the instrument creating the mortgage or hypothec, he has expressly empowered the person holding the mortgage or hypothec to vote in respect of such shares, in which case, subject to the articles, such holder or his proxy is the person entitled to vote in respect of the shares. R.S.O. 1960, c. 71, s. 77, *amended*.

Joint  
shareholders

**114.** Where two or more persons hold the same share or shares jointly, any one of such persons present at a meeting of shareholders has the right in the absence of the other or others to vote in respect of such share or shares, but, if more than one of such persons are present or represented by proxy and vote, they shall vote together as one on the share or shares jointly held by them. R.S.O. 1960, c. 71, s. 78, *amended*.

Interpre-  
tation

**115.** In this section and in sections 116 to 121,

- (a) "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy;
- (b) "information circular" means the circular referred to in subsection 1 of section 118;
- (c) "proxy" means a completed and executed form of proxy by means of which a shareholder has appointed a person as his nominee to attend and act for him and on his behalf at a meeting of shareholders;
- (d) "solicit" and "solicitation" include,
  - (i) any request for a proxy whether or not accompanied by or included in a form of proxy,
  - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
  - (iii) the sending or delivery of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
  - (iv) the sending or delivery of a form of proxy to a shareholder under section 117,

but do not include,

- (v) the sending or delivery of a form of proxy to a shareholder in response to an unsolicited request made by him or on his behalf, or
- (vi) the performance by any person of ministerial acts or professional services on behalf of a person soliciting a proxy. 1966, c. 28, s. 4, *part.*

**116.**—(1) Every shareholder, including a shareholder that <sup>Proxies</sup> is a body corporate, entitled to vote at a meeting of shareholders may by means of a proxy appoint a person, who need not be a shareholder, as his nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy.

(2) A proxy shall be executed by the shareholder or his <sup>Execution and termination</sup> attorney authorized in writing or, if the shareholder is a body corporate, under its corporate seal or by an officer or attorney thereof duly authorized, and ceases to be valid one year from its date.

(3) In addition to the requirements, where applicable, of <sup>Contents</sup> section 120, a proxy shall contain the date thereof and the appointment and name of the nominee and may contain a revocation of a former proxy and restrictions, limitations or instructions as to the manner in which the shares in respect of which the proxy is given are to be voted or that may be necessary to comply with the laws of any jurisdiction in which the shares of the corporation are listed on a stock exchange or a restriction or limitation as to the number of shares in respect of which the proxy is given.

(4) In addition to revocation in any other manner per- <sup>Revocation</sup> mitted by law, a proxy may be revoked by an instrument in writing executed by the shareholder or by his attorney authorized in writing or, if the shareholder is a body corporate, under its corporate seal or by an officer or attorney thereof duly authorized, and deposited either at the head office of the corporation at any time up to and including the last business day preceding the day of the meeting, or any adjournment thereof, at which the proxy is to be used or with the chairman of such meeting on the day of the meeting, or adjournment thereof, and upon either of such deposits the proxy is revoked.

(5) The directors may by resolution fix a time not exceeding <sup>Time limit for deposit</sup> forty-eight hours, excluding Saturdays and holidays, preceding any meeting or adjourned meeting of shareholders before which time proxies to be used at that meeting must be

deposited with the corporation or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting or in the information circular relating thereto. 1966, c. 28, s. 4, *part*.

Mandatory  
solicitation  
of proxies

**117.** Subject to section 119, the management of a corporation shall, concurrently with or prior to giving notice of a meeting of shareholders of the corporation, send by prepaid mail to each shareholder who is entitled to vote at such meeting at his latest address as shown on the records of the corporation a form of proxy that complies with section 120 for use at the meeting. 1966, c. 28, s. 4, *part, amended*.

Information  
circular

**118.—**(1) Subject to subsection 2 and section 119, no person shall solicit proxies unless,

(a) in the case of a solicitation by or on behalf of the management of a corporation, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each shareholder of the corporation whose proxy is solicited at his latest address as shown on the records of the corporation; or

(b) in the case of any other solicitation, the person making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each shareholder of the corporation whose proxy is solicited.

Where  
ss. 117,  
118 (1)  
apply

(2) Subsection 1 does not apply to,

(a) any solicitation, otherwise than by or on behalf of the management of a corporation, where the total number of shareholders whose proxies are solicited is not more than fifteen;

1966, c. 142

(b) any solicitation by a person made pursuant to section 79 of *The Securities Act, 1966*; and

(c) any solicitation by a person in respect of shares of which he is the beneficial owner.

Untrue  
solicitations  
an offence

(3) Section 256 applies to a solicitation that is subject to this section by means of a form of proxy, information circular or other communication. 1966, c. 28, s. 4, *part, amended*.

Where  
ss. 117,  
118 (1)  
apply

**119.—**(1) Section 117 and subsection 1 of section 118 apply only to a corporation that is offering its securities to the public.



(2) Upon the application of any interested person, the Commission may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order, on such terms and conditions as seem to it just and expedient, exempting, in whole or in part, any person from the requirements of section 117 or from the requirements of subsection 1 of section 118. 1966, c. 28, s. 4, *part, amended*. Exemption  
orders


**120.** Where section 117 or 118 applies to a solicitation of proxies, Special  
form of  
proxy

- (a) the form of proxy sent to a shareholder by a person soliciting proxies,
  - (i) shall indicate in bold-face type or other conspicuous manner whether or not the proxy is solicited by or on behalf of the management of the corporation, and
  - (ii) shall provide a specifically designated blank space for dating the form of proxy;
- (b) the form of proxy shall provide means whereby the person whose proxy is solicited is afforded an opportunity to specify that the shares registered in his name shall be voted by the nominee in favour of or against, in accordance with such person's choice, each matter or group of related matters identified therein or in the information circular as intended to be acted upon, other than the election of directors and the appointment of auditors, but a proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by such means if the form of proxy or the information circular states in bold-face type or other conspicuous manner how it is intended to vote the shares represented by the proxy in each such case;
- (c) a proxy may confer discretionary authority with respect to,
  - (i) amendments or variations to matters identified in the notice of meeting, or
  - (ii) other matters that may properly come before the meeting,
 but only if,
  - (iii) the person by whom or on whose behalf the solicitation is made is not aware a reasonable

time prior to the time the solicitation is made that any such amendments, variations or other matters are to be presented for action at the meeting, and

- (iv) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority;
- (d) no proxy shall confer authority,
  - (i) to vote for the election of any person as a director of the corporation unless a *bona fide* proposed nominee for such election is named in the information circular, or
  - (ii) to vote at any meeting other than the meeting specified in the notice of meeting or any adjournment thereof;
- (e) the information circular or form of proxy shall state that the shares represented by the proxy will be voted and that, where the person whose proxy is solicited specifies a choice with respect to any matter to be acted upon under clause *b*, the shares shall, subject to section 121, be voted in accordance with the specifications so made;
- (f) the information circular or form of proxy shall indicate in bold-face type or other conspicuous manner that the shareholder has the right to appoint a person to attend and act for him and on his behalf at the meeting other than the person, if any, designated in the form of proxy, and shall contain instructions as to the manner in which the shareholder may exercise such right; and
- (g) if the form of proxy contains a designation of a named person as nominee, means shall be provided whereby the shareholder may designate in a form of proxy some other person as his nominee for the purpose of subsection 1 of section 116. 1966, c. 28, s. 4, *part, amended*.

Where  
vote by  
ballot  
not  
required

 **121.** If the votes represented at a meeting by proxies requiring that they be voted in respect of a particular matter or group of matters total to the knowledge of the chairman of that meeting, less than 5 per cent of all of the voting rights attaching to all of the shares entitled to be voted and be represented at the meeting, the chairman has the right not to conduct a

vote by way of ballot on any such matter or group of matters unless a poll is demanded at the meeting in which case the vote shall be by way of ballot. 1966 c. 28 s. 4 *part, amended.*

## DIRECTORS AND OFFICERS

### *Directors*

**122.**—(1) Every corporation shall have a board of directors <sup>Board of directors</sup> howsoever designated.

(2) The board of directors shall consist of a fixed number <sup>Com-position</sup> of directors,

(a) in the case of a corporation that is not offering its securities to the public, of at least one; and

(b) in the case of a corporation that is offering its securities to the public, of not fewer than three, of whom at least two shall not be officers or employees of the corporation or of any affiliate of the corporation. R.S.O. 1960, c. 71, s. 296 (1, 2), *amended.*

**123.**—(1) Each of the persons named as first directors <sup>First directors</sup> in the articles of a corporation is a director of the corporation until replaced by a person duly elected or appointed in his stead.

(2) The first directors of a corporation have all the powers <sup>Idem</sup> and duties and are subject to all the liabilities of directors. R.S.O. 1960, c. 71, s. 297 (1, 2), *amended.*

**124.**—(1) A corporation may by special by-law increase <sup>Change in number of directors</sup> or, subject to subsection 2 of section 122, decrease the number of its directors as set out in its articles.

(2) The corporation shall file with the Minister a certified <sup>Filing of by-law</sup> copy of the by-law within ten days after the by-law has been confirmed by the shareholders.

(3) Failure to comply with subsection 2 does not affect <sup>Validity</sup> the validity of the by-law. R.S.O. 1960, c. 71, s. 298, *amended.*

**125.**—(1) No person under twenty-one years of age shall <sup>Age of directors</sup> be a director of a corporation.

(2) No undischarged bankrupt or mentally incompetent <sup>Qualifica-tions</sup> person shall be a director, and, if a director becomes a bankrupt or a mentally incompetent person, he thereupon ceases to be a director. R.S.O. 1960, c. 71, s. 299 (4, 5), *amended.*

Consent

(3) A person who is elected or appointed a director is not a director unless,

(a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as director;

(b) where he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.

Idem

(4) For the purposes of subsection 3, a person who is elected or appointed as director and refuses under clause *a* of subsection 3 or fails to consent under clause *b* of subsection 3 shall be deemed not to have been elected or appointed as a director. *New.*

Election of directors

**126.**—(1) The directors shall be elected by the shareholders in general meeting, and the election shall be by ballot or in such other manner as the by-laws of the corporation prescribe.

Idem

(2) The election of directors shall take place yearly, or at such other interval not exceeding five years as is provided by the articles and all the directors then in office shall retire, but, if qualified, are eligible for re-election. R.S.O. 1960, c. 71, s. 300 (1, 2), *amended.*

Continuance in office

(3) If an election of directors is not held within the prescribed period, the directors continue in office until their successors are elected.

Rotation of directors

(4) The articles may provide for the election and retirement of directors in rotation, but in that case no director shall be elected for a term of more than five years and at least three directors shall retire from office in each year. R.S.O. 1960, c. 71, s. 300 (3, 4), *amended.*

Cumulative voting for directors

**127.** The articles or a special by-law of a corporation may provide that,

(a) every shareholder entitled to vote at an election of directors has the right to cast thereat a number of votes equal to the number of votes attached to the shares held by him multiplied by the number of directors to be elected, and he may cast all such votes in favour of one candidate or distribute them among the candidates in such manner as he sees fit; and



- (b) where he has voted for more than one candidate without specifying the distribution of his votes among such candidates, he shall be deemed to have divided his votes equally among the candidates for whom he voted. R.S.O. 1960, c. 71, s. 64 (1), *amended*.

**128.**—(1) Subject to subsection 2, where there is a quorum <sup>Vacancies</sup> of directors in office and a vacancy occurs in the board, the directors remaining in office may appoint a qualified person to fill the vacancy for the remainder of the term. R.S.O. 1960, c. 71, s. 301 (1, 2), *amended*.

(2) Where part of the board of directors has been elected <sup>Idem, where</sup> by the holders of the shares of a special class of shares as <sup>elected by</sup> provided in clause *d* of subsection 1 of section 27, and a <sup>class of</sup> vacancy occurs in that part of the board, the remaining <sup>shareholders</sup> directors or director, if any, in that part of the board may appoint a qualified person to fill the vacancy for the remainder of the term, and, if there is no such remaining director, the holders of that class of shares at a general meeting thereof that may be called by any holder of shares of that class may elect a qualified person to fill the vacancy for the remainder of the term. *New*.

(3) When there is not a quorum of directors in office, the <sup>Idem,</sup> director or directors then in office shall forthwith call a <sup>where no</sup> general meeting of the shareholders to fill the vacancies, and, <sup>quorum</sup> in default or if there are no directors then in office, the meeting may be called by any shareholder. R.S.O. 1960, c. 71, s. 301 (3).

**129.** Unless the articles or by-laws otherwise provide, a <sup>Quorum of</sup> majority of the board of directors constitutes a quorum, but <sup>directors</sup> in no case shall a quorum be less than two-fifths of the board of directors or two directors, whichever is the greater. R.S.O. 1960, c. 71, s. 301 (1), *amended*.

**130.**—(1) Subject to subsection 2, the meetings of the <sup>Place of</sup> board of directors and the executive committee shall be held <sup>meetings</sup> at the place where the head office of the corporation is located.

(2) Where the by-laws of the corporation so provide, the <sup>Exception</sup> meetings of the board of directors and of the executive committee may be held at any place within or outside Ontario. R.S.O. 1960, c. 71, s. 74 (1, 2), *amended*.

**131.**—(1) In addition to any other provision in the articles <sup>Calling</sup> or by-laws of a corporation for calling meetings of directors, <sup>meetings</sup> a quorum of the directors may, at any time, call a meeting of <sup>of directors</sup>

the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting.

Notice

(2) In the absence of any other provision in that behalf in the by-laws of the corporation, notice of the time and place for the holding of the meeting called under subsection 1 shall be given to every director of the corporation by sending the notice by prepaid mail ten days or more before the date of the meeting to his latest address as shown on the records of the corporation. *New.*

Duties

**132.**—(1) The board of directors shall manage or supervise the management of the affairs and business of the corporation.

Conduct of  
business

(2) Subject to section 133 and subsection 1 of section 23, no business of a corporation shall be transacted by its directors except at a meeting of directors at which a quorum of the board is present.

Idem

(3) Where there is a vacancy or vacancies in the board of directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office. R.S.O. 1960, c. 71, s. 296, *amended.*

Executive  
committee

**133.**—(1) Where the number of directors of a corporation is more than six, and if authorized by a special by-law, the directors may elect from among their number an executive committee consisting of not fewer than three and may delegate to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors.

Quorum

(2) An executive committee may fix its quorum, which shall be not less than a majority of its members. R.S.O. 1960, c. 71, s. 69 (1, 2), *amended.*

Disclosure  
by directors  
of interests  
in contracts

**134.**—(1) Every director of a corporation who has, directly or indirectly, any interest in any contract or transaction to which the corporation is or is to be a party, other than a contract or transaction limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the corporation and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase and sale of assets by or to the corporation or a subsidiary thereof, the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such information is within his knowledge or control.

(2) Subsection 1 does not require the disclosure of any interest in any contract or transaction unless the interest and the contract or transaction are both material. <sup>Interest to be material</sup>

(3) The declaration required by this section shall be made at the meeting of the directors at which the contract or transaction is first considered or, if the director is not at the date of the meeting interested in the contract or transaction, at the next meeting of the directors held after he becomes so interested, and, where the director becomes interested in a contract or transaction after it is entered into, the declaration shall be made at the first meeting of the directors held after he becomes so interested. <sup>When declaration of interest to be made</sup>

(4) If a director has made a declaration and disclosure of his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the corporation, the director, if he was acting honestly and in good faith at the time the contract or transaction was entered into is not by reason only of his holding the office of director accountable to the corporation or to its shareholders for any profit or gain realized from the contract or transaction, and the contract or transaction, if it was in the best interest of the corporation, is not voidable by reason only of the director's interest therein. <sup>Effect of declaration</sup>

(5) Notwithstanding anything in this section, a director, if he was acting honestly and in good faith, is not accountable to the corporation or to its shareholders for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction, if it was in the best interests of the corporation at the time it was entered into is not by reason only of the director's interest therein voidable, <sup>Confirmation by shareholders</sup>

- (a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for that purpose; and
- (b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting or in the information circular required by section 118. R.S.O. 1960, c. 71, s. 70, *amended*.

**135.**—(1) Where any shares of a corporation are acquired by it by redemption, purchase or acceptance for surrender in contravention of this Act or the articles, the directors who voted in favour of or consented to the resolution authorizing <sup>Liability of directors re purchase of shares</sup>

the redemption, purchase or acceptance for surrender are jointly and severally liable to the corporation to the extent of the amount paid for the acquisition of the shares.

Application  
to court

(2) Where any shares of a corporation are acquired by it by redemption, purchase or surrender in contravention of this Act or the articles,

(a) any shareholder of the corporation; or

(b) where the acquisition is in contravention of subsection 1 of section 38, subsection 3 of section 39 or section 100, any creditor of the corporation who was a creditor at the time of the acquisition,

may apply to the court within two years of the acquisition, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any shareholder whose shares were acquired liable to the corporation, jointly and severally with the directors, to the extent of the amount paid to him for his shares. *New.*

Liability  
of directors  
re dividends

**136.** Where any dividend is declared and paid in contravention of section 153 or 154,

(a) the directors who voted in favour of or consented to the resolution authorizing the declaration of the dividend are jointly and severally liable to the corporation to the extent of the amount of the dividend so declared and paid or such part thereof as renders the corporation insolvent or diminishes its capital; and

(b) any shareholder of the corporation or any creditor of the corporation who was a creditor at the time of the declaration of the dividend may apply to the court within two years of the declaration, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any shareholder to whom the dividend is paid jointly and severally liable with the directors to the extent of the amount of the dividend paid to him. R.S.O. 1960, c. 71, s. 61 (3), *part, amended.*

Consent of  
director at  
meeting

**137.—**(1) A director who was present at a meeting of the board of directors or an executive committee thereof when,

(a) the redemption, purchase or acceptance for surrender of shares of the corporation is authorized;



- (b) the declaration and payment of a dividend is authorized; or
- (c) a loan or guarantee mentioned in section 146 is authorized,

shall be deemed to have consented thereto unless,

- (d) his dissent is entered in the minutes of the meeting;
- (e) he files his written dissent with the person acting as secretary of the meeting before its adjournment; or
- (f) he delivers or sends his dissent by registered mail to the corporation immediately after the adjournment of the meeting,

and within seven days after complying with clause *d*, *e* or *f* he sends a copy of his dissent by registered mail to the Minister.

(2) A director who voted in favour of a matter referred to <sup>Idem</sup> in subsection 1 is not entitled to dissent under subsection 1.

(3) A director who was not present at a meeting of the board of directors or any executive committee thereof when, <sup>Consent of director not at meeting</sup>

- (a) the redemption, purchase or acceptance for surrender of shares of the corporation is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) a loan or guarantee mentioned in section 146 is authorized,

shall be deemed to have consented thereto unless,

- (d) he delivers or sends to the corporation by registered mail his dissent; or
- (e) he causes his dissent to be filed with the minutes of the meeting,

within seven days after he becomes aware of the authorization referred to in clause *a*, *b* or *c* and unless, within seven days after complying with clause *d* or *e*, he sends a copy of his dissent by registered mail to the Minister. *New.*

**138.**—(1) A director is not liable under section 135, 136 <sup>Exception to liability</sup> or 146 if, in the circumstances, he discharged his duty to the corporation in accordance with section 144.

Liability  
not  
excluded

(2) The liability imposed by this Act upon a director is in addition to any other liability that is by law imposed upon him. *New.*

Liability of  
directors  
for wages  
R.S.O. 1960,  
c. 230

**139.**—(1) The directors of a corporation are jointly and severally liable to the employees of the corporation to whom *The Master and Servant Act* applies for all debts that become due while they are directors for services performed for the corporation, not exceeding six months wages, and for the vacation pay accrued for not more than twelve months under *The Employment Standards Act, 1968* and the regulations thereunder or under any collective agreement made by the corporation.

1968, c. 35

Limitation  
of liability

(2) A director is liable under subsection 1,

(a) only if,

(i) the corporation has been sued for the debt within six months after it has become due and execution against the corporation has been returned unsatisfied in whole or in part, or

(ii) the corporation has within that period gone into liquidation or has been ordered to be wound up or has made an authorized assignment under the *Bankruptcy Act* (Canada), or a receiving order under the *Bankruptcy Act* (Canada) has been made against it and, in any such case, the claim for the debt has been proved; and

R.S.C. 1952,  
c. 14

(b) he is sued for the debt while he is a director or within two years after he ceases to be a director.

Idem

(3) After execution has been so returned against the corporation, the amount recoverable against the director is the amount remaining unsatisfied on the execution.

Rights of  
director  
who pays  
the debt

(4) If the claim for the debt has been proved in liquidation or winding-up proceedings or under the *Bankruptcy Act* (Canada), a director who pays the debt is entitled to any preference that the creditor paid would have been entitled to or, if a judgment has been recovered for the debt, the director is entitled to an assignment of the judgment. R.S.O. 1960, c. 71, s. 73 (1-4), *amended.*

Removal  
of directors

**140.** The shareholders may, by resolution passed by a majority of the votes cast at a general meeting duly called for that purpose, remove any director before the expiration of

his term of office and may, by a majority of the votes cast at the meeting, elect any person in his stead for the remainder of his term, but, where the directors have been elected by the method of voting provided by section 127, no director shall be removed from office where the votes cast against the resolution for his removal would, if cumulatively voted at an election of the full board of directors, be sufficient to elect one or more directors. R.S.O. 1960, c. 71, s. 66 (1), *amended*.

### *Officers*

**141.**—(1) A corporation shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors. Officers

(2) In the absence of other provisions in that behalf in the articles or by-laws, the directors, Election and appointment

(a) shall elect the president from among themselves;

(b) shall appoint or elect the secretary; and

(c) may appoint or elect one or more vice-presidents or other officers. R.S.O. 1960, c. 71, s. 302 (1, 2), *amended*.

**142.** A corporation may by special by-law,

Chairman  
of the  
board

(a) provide for the election or appointment by the directors from among themselves of a chairman of the board;

(b) define the duties of the chairman;

(c) assign to the chairman all or any of the duties of the president or of any other officer of the corporation,

and, if the by-law assigns to the chairman any of the duties of the president, it shall also fix and prescribe the duties of the president. R.S.O. 1960, c. 71, s. 303, *amended*.

**143.** Unless the articles or by-laws otherwise provide, no person shall be the president or chairman of the board of a corporation unless he is a director of the corporation but no other officer need be a director. R.S.O. 1960, c. 71, s. 304 (1), *amended*. Qualifications of chairman and president

### *General*

**144.** Every director and officer of a corporation shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the corporation, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. *New*. Standards of care, etc., of directors

Validity of  
acts of  
directors  
and officers

**145.** An act done by a director or by an officer is not invalid by reason only of any defect that is thereafter discovered in his appointment, election or qualification. R.S.O. 1960, c. 71, s. 305, *amended*.

Liability  
of directors  
and officers

**146.** Those directors and officers of a corporation who authorize or consent to a loan in contravention of section 17 are, until repayment of the loan, jointly and severally liable to the corporation and to its creditors for the debts of the corporation then existing or thereafter contracted to the amount of the loan with interest at the rate of 6 per cent a year. R.S.O. 1960, c. 71, s. 23 (4), *amended*.

Indemnifi-  
cation of  
directors

**147.**—(1) Subject to subsection 2, the by-laws of a corporation may provide that every director and officer of the corporation and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against,

- (a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and
  - (b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the corporation.
- R.S.O. 1960, c. 71, s. 72, *amended*.

Idem

(2) No director or officer of a corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant. *New*.

Insurance

(3) A corporation may purchase and maintain insurance for the benefit of a director or officer thereof, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of a contravention of section 144. *New*.

#### INSIDERS

Insiders  
to report  
holdings  
to O.S.C.

**148.**—(1) A person who becomes an insider of a corporation shall, within ten days after the end of the month in which he becomes an insider, file with the Commission a report, as



of the day on which he became an insider, of his direct or indirect beneficial ownership of or control or direction over securities of the corporation.

(2) If a person who is an insider of a corporation but has <sup>Idem</sup> no direct or indirect beneficial ownership of or control or direction over securities of the corporation acquires direct or indirect beneficial ownership of or control or direction over any such securities, he shall, within ten days after the end of the month in which he acquired such direct or indirect beneficial ownership or such control or direction, file with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of or control or direction over securities of the corporation.

(3) A person who has filed or is required to file a report <sup>Subsequent reports of changes</sup> under subsection 1 or 2 and whose direct or indirect beneficial ownership of or control or direction over securities of the corporation changes from that shown or required to be shown in such report or in the last report filed by him under this section shall, within ten days following the end of the month in which such change takes place, provided that he was an insider of the corporation at any time during such month, file with the Commission a report of his direct or indirect beneficial ownership of or control or direction over securities of the corporation at the end of such month and the change or changes therein that occurred during the month and giving such details of each transaction as may be required by the regulations. 1966, c. 28, s. 3, *part, amended*.

**149.**—(1) All reports filed with the Commission under section 148 shall, upon payment of the prescribed fee, be open <sup>Reports may be inspected</sup> to public inspection at the offices of the Commission during normal business hours of the Commission, and any person may make extracts from such reports.

(2) The Commission shall summarize in or as part of a <sup>Publication of information contained in reports</sup> monthly periodical for distribution to the public on payment of the prescribed fee therefor the information contained in the reports so filed. 1966, c. 28, s. 3, *part*.

**150.**—(1) Every insider of a corporation or associate or <sup>Liability of insiders</sup> affiliate of such insider who, in connection with a transaction relating to the securities of the corporation, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person for any direct loss suffered by such person as a result of the transaction, unless the information

was known or ought reasonably to have been known to such person at the time of the transaction, and is also accountable to the corporation for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of the transaction.

Limitation  
period

(2) An action to enforce any right created by subsection 1 may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action. 1966, c. 28, s. 3, *part.*

Order to  
commence  
action

**151.—**(1) Upon application by any person who was at the time of a transaction referred to in subsection 1 of section 150 or is at the time of the application an owner of securities of the corporation, the court may, if satisfied that,

(a) such person has reasonable grounds for believing that the corporation has a cause of action under section 150; and

(b) either,

(i) the corporation has refused or failed to commence an action under section 150 within sixty days after receipt of a written request from such person so to do, or

(ii) the corporation has failed to prosecute diligently an action commenced by it under section 150,

make an order, upon such terms as to security for costs and otherwise as to the court seems fit, requiring the Commission to commence or continue an action in the name of and on behalf of the corporation to enforce the liability created by section 150.

Notice to  
corporation  
and O.S.C.

(2) The applicant under subsection 1 shall give to the corporation and the Commission notice of his application, and the corporation and the Commission have the right to appear and be heard thereon.

Order to  
require  
corporation  
to  
co-operate

(3) Every order made under subsection 1 shall provide that the corporation shall co-operate fully with the Commission in the institution and prosecution of the action and shall make available to the Commission all records, documents and other material or information known to the corporation or reasonably ascertainable by the corporation relevant to the action. 1966, c. 28, s. 3, *part.*

**152.** Upon the application of any interested person, the Commission may, if satisfied upon the circumstances of the particular case that there is adequate justification for so doing, make an order upon such terms and conditions as seem to the Commission to be expedient exempting in whole or in part any person from the requirements of section 148. *New.* Exception

#### DIVIDENDS

**153.**—(1) Subject to the articles of the corporation, the directors may declare and the corporation may pay dividends on its issued shares. Power to declare dividends

(2) A dividend may be paid in cash or in property not exceeding in value the amount of the dividend. Manner of payment

(3) The directors shall not declare and the corporation shall not pay any dividend when the corporation is insolvent, or any dividend the payment of which renders the corporation insolvent or that diminishes its capital. R.S.O. 1960, c. 71, s. 61 (1-3), *amended.* When dividend not to be declared

**154.**—(1) Notwithstanding anything in this Act, a corporation, Corporations with wasting assets

- (a) that for the time being carries on as its principal business the business of operating a producing mining, gas or oil property owned and controlled by it; or
- (b) at least 75 per cent of the assets of which are of a wasting character; or
- (c) incorporated for the object of acquiring the assets or a substantial part of the assets of a body corporate and administering such assets for the purpose of converting them into cash and distributing the cash among the shareholders of the corporation,

may declare and pay dividends out of the funds derived from the operations of the corporation.

(2) The powers conferred by subsection 1 may be exercised notwithstanding that the value of the net assets of the corporation may be thereby reduced to less than its issued capital if the payment of the dividends does not reduce the value of its remaining assets to an amount insufficient to meet all the liabilities of the corporation exclusive of its issued capital. Extent of impairment of capital

(3) The powers conferred by subsection 1 may be exercised only under the authority of a special by-law. Special by-law

Idem

(4) Where dividends have been paid by a corporation in any of the cases mentioned in subsection 1 without the authority of a by-law, the payment thereof is nevertheless valid if a by-law adopting and approving the payment is passed and confirmed in the same manner as for a special by-law. R.S.O. 1960, c. 71, s. 61 (5-8), *amended*.

Stock dividends

**155.** For the amount of any dividend that the directors may declare payable in cash, they may declare a stock dividend and issue therefor shares of the corporation as fully paid. R.S.O. 1960, c. 71, s. 62, *amended*.

## RECORDS

Records

**156.**—(1) Where this Act requires a record to be kept by a corporation, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device.

Where not in bound book

(2) Where a record is not kept in a bound book, the corporation shall,

- (a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and
- (b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the record. R.S.O. 1960, c. 71, s. 1, cls. *a, h*, *amended*.

Admissibility of records in evidence

(3) The bound or looseleaf book or, where the record is not kept in a bound or looseleaf book, the information in the form in which it is made available under clause *b* of subsection 2 is admissible in evidence as *prima facie* proof, before and after dissolution of the corporation, of all facts stated therein. R.S.O. 1960, c. 71, s. 314, *amended*.

False information

(4) No person shall remove, withhold or destroy information required by this Act or the regulations to be recorded, or

- (a) record or assist in recording any information in a record; or
- (b) make information purporting to be accurate available in a form referred to in clause *b* of subsection 2,

knowing it to be untrue. R.S.O. 1960, c. 71, s. 316, *amended*.

Records

**157.** A corporation shall cause to be kept the following records:



1. A copy of the articles of the corporation.
2. All by-laws and resolutions, including special by-laws and special resolutions of the corporation.
3. A register of security holders in which is set out the names alphabetically arranged or alphabetically indexed in appropriate categories of,
  - i. all persons who are or have been within ten years registered as shareholders of the corporation and the address including the street and number, if any, of every such person while a holder, in which are set out also the number and class of shares held by such holder and, where the shares were issued before this Act comes into force and not fully paid, the amounts paid up and remaining unpaid on such shares,
  - ii. all persons who are or have been holders of debt obligations other than debt obligations in bearer form of the corporation and the address including the street and number, if any, of every such person while a holder in which are set out also the class or series and principal amount of the debt obligations held by such holder.
4. A register of directors in which are set out the names and residence addresses, including the street and number, if any, of all persons who are or have been directors of the corporation with the several dates on which each became or ceased to be a director.
5. Proper accounting records in which are set out all financial and other transactions of the corporation including, without limiting the generality of the foregoing, records of,
  - i. all sums of money received and disbursed by the corporation and the matters with respect to which receipt and disbursement took place,
  - ii. all sales and purchases of the corporation,
  - iii. the assets and liabilities of the corporation, and
  - iv. all other transactions affecting the financial position of the corporation.

6. The minutes of all proceedings at meetings of shareholders, directors and any executive committee. R.S.O. 1960, c. 71, ss. 312 (1), 313, 315, *amended*.

Register of transfers

**158.** Every corporation shall cause to be kept a register of transfers in which all transfers of securities issued by the corporation in registered form and the date and other particulars of each transfer shall be set out. R.S.O. 1960, c. 71, s. 40, *amended*.

Transfer agents

**159.** A corporation may appoint a transfer agent to keep the register of security holders and the register of transfers and may also appoint one or more branch transfer agents to keep branch registers of security holders and branch registers of transfers. R.S.O. 1960, c. 71, s. 41, *amended*.

Where registers to be kept

**160.**—(1) The register of security holders and the register of transfers shall be kept at the head office of the corporation or at such other office or place in Ontario as is appointed by resolution of the directors, and the branch register or registers of security holders and the branch register or registers of transfers may be kept at such office or offices of the corporation or other place or places, either in or outside Ontario, as are appointed by resolution of the directors.

Valid registration

(2) Registration of the transfer of a security of the corporation in the register of transfers or a branch register of transfers is a complete and valid registration for all purposes.

Entry in branch transfer register

(3) In each branch register of transfers shall be recorded only the particulars of the transfers of securities registered in that branch register of transfers.

Entry in register of transfers

(4) Particulars of every transfer of securities registered in every branch register of transfers shall be recorded in the register of transfers. R.S.O. 1960, c. 71, s. 42, *amended*.

Records open to examination by directors

**161.**—(1) The records mentioned in sections 157 and 158 shall, during the normal business hours of the corporation, be open to examination by any director and shall, except as provided in section 160 and in subsections 2 and 3 of this section, be kept at the head office of the corporation.

Records of account at branch

(2) A corporation may keep at any place where it carries on business such parts of the accounting records as relate to the operations, business and assets and liabilities of the corporation carried on, supervised or accounted for at such place, but there shall be kept at the head office of the corporation or such other place as is authorized under subsection 3 such records as will enable the directors to ascertain quarterly with reasonable accuracy the financial position of the corporation.

## (3) Where a corporation,

Order for  
removal of  
records

- (a) shows, to the satisfaction of the Minister, the necessity of keeping all or any of the records mentioned in subsection 1 at a place other than the head office of the corporation; and
- (b) gives to the Minister adequate assurance, by surety bond or otherwise, that such records will be open for examination,
  - (i) at the head office or some other place in Ontario designated by the Minister, and
  - (ii) by any person who is entitled to examine them and who has applied to the Minister for such an examination,

the Minister may, by order and upon such terms as he thinks fit, permit the corporation to keep such of them at such place or places, other than the head office, as he thinks fit. R.S.O. 1960, c. 71, s. 317 (1-3), *amended*.

(4) The Minister may by order upon such terms as he sees fit rescind any order made under subsection 3 or any order made by the Lieutenant Governor in Council under a predecessor of that subsection. R.S.O. 1960, c. 71, s. 317 (5), *amended*.

Rescission  
of orders  
made under  
subs. 3

**162.**—(1) Subject to section 163, the records of a corporation mentioned in section 157 or 158, other than accounting records, resolutions of directors and the minutes of proceedings at meetings of directors and of executive committees, shall, during the normal business hours of the corporation and at the place or places where they are kept, be open to examination by the shareholders and creditors or their agents or personal representatives, and any of them may make extracts therefrom.

Examination  
of records  
by share-  
holders  
and  
creditors

(2) No person shall refuse to permit a person entitled thereto to inspect such records or to make extracts therefrom. R.S.O. 1960, c. 71, s. 318, *amended*.

Idem

**163.**—(1) A shareholder or creditor or the agent or personal representative of any of them shall not make or cause to be made a list of all or any of the security holders of the corporation unless he has filed with the corporation or its agent his affidavit in the following form, and, where the security holder or creditor is a body corporate, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the body corporate:

List of  
security  
holders

## Form of Affidavit

Province of Ontario } In the matter of  
County of (Insert name of corporation)

I, ....., of the ..... of .....,  
in the ..... of .....,  
make oath and say:

1. I am a shareholder (or creditor) of the above-named corporation.

*(Where the shareholder or creditor is a body corporate, indicate office and authority of deponent in paragraph 1.)*

2. I am applying to make a list of the shareholders (debt obligation holders) of the above-named corporation.

3. I require the list of shareholders (debt obligation holders) only for purposes connected with the above-named corporation.

4. The list of shareholders (debt obligation holders) and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

Use of  
list

(2) No person, other than the corporation or its agent, shall use a list of all or any of the security holders of a corporation obtained under this section,

(a) for the purpose of delivering or sending to all or any of the security holders advertising or other printed matter relating to securities, other than the securities of the corporation; or

(b) for any purpose not connected with the corporation.

Purposes  
connected  
with the  
corporation  
defined

(3) Purposes connected with the corporation include any effort to influence the voting of shareholders or debt obligation holders at any meeting thereof and include the acquisition or offering of shares to acquire control or to effect an amalgamation or reorganization. R.S.O. 1960, c. 71, s. 319 (1-3), *amended*.

Where  
list of  
shareholders  
to be  
furnished

**164.**—(1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection 2, may require a corporation, other than a corporation that is not offering its securities to the public, or its transfer agent to furnish within ten days from the filing of the affidavit a list setting out the names alphabetically arranged of all persons who are shareholders of the corporation, the number of shares owned by each such person and the address of each such person as shown on the records of the corporation made up to a date not more than ten days before the date of filing the affidavit.



(2) The affidavit referred to in subsection 1 shall be made <sup>Form of</sup> by the applicant and shall be in the following form: <sup>affidavit</sup>

Form of Affidavit

Province of Ontario } In the matter of  
County of } *(Insert name of corporation)*

I, ..... of the ..... of .....  
in the ..... of .....  
make oath and say:

*(Where the applicant is a body corporate, indicate office and authority of deponent.)*

1. I hereby apply for a list of the shareholders of the above-named corporation.

2. I require the list of shareholders only for purposes connected with the above-named corporation.

3. The list of shareholders and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

(3) Where the applicant is a body corporate, the affidavit <sup>Idem,</sup> shall be made by the president or other officer authorized by <sup>where</sup> resolution of the board of directors of the body corporate. <sup>applicant</sup> <sup>a body</sup> <sup>corporate</sup>

(4) No person shall use a list of all or any of the shareholders <sup>Use of list</sup> of a corporation obtained under this section,

(a) for the purpose of delivering or sending to all or any of the shareholders advertising or other printed matter relating to securities other than the securities of the corporation; or

(b) for any purpose not connected with the corporation.

(5) Every corporation or transfer agent shall furnish a list <sup>Furnishing list</sup> in accordance with subsection 1 when so required.

(6) Purposes connected with the corporation include any <sup>Purposes</sup> effort to influence the voting of shareholders at any meeting <sup>connected</sup> thereof, any offer to acquire shares in the corporation or any <sup>with</sup> effort to effect an amalgamation or reorganization. <sup>corporation</sup> <sup>defined</sup> 1966, c. 28, s. 17, *part, amended*.

**165.** No person shall offer for sale or sell or purchase or <sup>Trafficking</sup> otherwise traffic in a list or a copy of a list of all or any of the <sup>in lists</sup> security holders of a corporation. 1966, c. 28, s. 17, *part, amended*.

Power of  
court to  
correct

**166.**—(1) Where the name of a person is, without sufficient cause, entered in or omitted from the records of a corporation other than accounting records, or if default is made or unnecessary delay takes place in entering therein the fact of any person having ceased to be a security holder of the corporation, the person or security holder aggrieved, or any security holder of the corporation, or the corporation itself, may apply to the court for an order that the records be rectified, and the court may dismiss such application or make an order for the rectification of the records and may direct the corporation to compensate the party aggrieved for any damage he has sustained.

Decision  
as to title

(2) The court may, in any proceeding under this section, decide any question relating to the entitlement of a person who is a party to the proceeding to have his name entered in or omitted from such records whether the question arises between two or more security holders or alleged security holders, or between any security holders or alleged security holders and the corporation.

Trial  
of issue

(3) The court may direct an issue to be tried. R.S.O. 1960, c. 71, s. 320 (1-3), *amended*.

Jurisdiction  
of courts  
not  
affected

(4) This section does not deprive any court of any jurisdiction it otherwise has. R.S.O. 1960, c. 71, s. 320 (5).

#### AUDITORS AND FINANCIAL STATEMENTS

Exemption  
from  
audit  
provisions

**167.**—(1) Subject to subsection 2, where in a financial year all the shareholders of a corporation that,

- (a) is not offering its securities to the public;
- (b) has five or fewer shareholders; and
- (c) has assets not exceeding \$500,000 and sales and gross operating revenues not exceeding \$1,000,000, as shown on the financial statement of the corporation for the preceding year,

consent in writing, the corporation is exempt from sections 168, and 169, subsections 1 to 4 of section 170 and section 171 in respect of the year in which the consent is given.

Subsidiary  
corporations

(2) Subsection 1 does not apply to a subsidiary corporation unless its holding corporation is exempted under subsection 1 at the time the consent of the shareholders is given. *New.*

**168.**—(1) The shareholders of a corporation at their first <sup>Auditors</sup> general meeting shall appoint one or more auditors to hold office until the close of the first annual meeting and, if the shareholders fail to do so, the directors shall forthwith make such appointment or appointments.

(2) The shareholders shall at each annual meeting appoint <sup>Idem</sup> one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

(3) The directors may fill any casual vacancy in the office <sup>Casual vacancy</sup> of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

(4) The shareholders may, by resolution passed by a majority of the votes cast at a general meeting duly called for the purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term. R.S.O. 1960, c. 71, s. 80 (1-4), *amended*. <sup>Removal of auditor</sup>

(5) Before calling a general meeting for the purpose specified in subsection 4, the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor, <sup>Notice to auditor</sup>

(a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

(6) The auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing concerning his proposed removal as auditor, and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting. *New*. <sup>Right of auditor to make representations</sup>

(7) The remuneration of an auditor appointed by the shareholders shall be fixed by the shareholders, or by the directors if they are authorized so to do by the shareholders, and the remuneration of an auditor appointed by the directors shall be fixed by the directors. <sup>Remuneration</sup>

Appoint-  
ment by  
court

(8) If for any reason no auditor is appointed, the court may, on the application of a shareholder, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the corporation for his or their services.

Notice of  
appoint-  
ment

(9) The corporation shall give notice in writing to an auditor of his appointment forthwith after the appointment is made. R.S.O. 1960, c. 71, s. 80 (5-7), *amended*.

Notice to  
auditor of  
proposal  
to appoint  
another

**169.**—(1) If, in the information circular required by subsection 1 of section 118, reference is made to action proposed to be taken at an annual meeting of shareholders with respect to the appointment of an auditor other than the incumbent auditor, the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the incumbent auditor written notice of management's intention not to recommend his re-appointment at the annual meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed.

Right of  
incumbent  
auditor  
to make  
represent-  
ations

(2) The incumbent auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing concerning the proposal not to re-appoint him as auditor, and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting. *New*.

Persons  
disqualified  
as auditors

**170.**—(1) No person shall be appointed or act as auditor of a corporation who is a director, officer or employee of the corporation or of an affiliate of the corporation or who is a partner, employer or employee of any such director, officer or employee or who is a related person to any director or officer of the corporation or of an affiliate of the corporation. R.S.O. 1960, c. 71, s. 81 (1), *amended*.

Idem

(2) No person shall be appointed or act as auditor of a corporation if he or any partner or employer of or related person to him beneficially owns, directly or indirectly, any securities of the corporation or of a subsidiary thereof or, if the corporation is a subsidiary, any securities of its holding corporation.

Where  
subs. 2  
does not  
apply

(3) Subsection 2 does not apply to a person, partner, employer or related person, as the case may be, if the person, partner, employer or related person is not empowered to decide whether securities of the corporation or its holding corporation, as the case may be, are to be beneficially owned, directly or indirectly, by him, or if he is not entitled to vote in respect thereof.



(4) Where, on the date this section comes into force, an <sup>Idem</sup> auditor or his partner, employer or related person owns securities as set out in subsection 2, notwithstanding subsection 2, he may for a period of two years from the date this section comes into force continue to act as auditor if he discloses in the report required under subsection 2 of section 171 that he or his partner, employer or related person so owns such securities but, at the expiration of such period, he shall cease to act as auditor unless he or his partner, employer or related person, as the case may be, has disposed of such securities.

(5) No person shall be appointed a receiver or a receiver <sup>Auditors not to be appointed receivers, etc.</sup> and manager or liquidator of any corporation of which he or any partner or employer of or a related person to him is the auditor or has been auditor within the two years preceding his appointment as receiver or receiver and manager or liquidator.

(6) No person who is appointed a trustee of the estate of a <sup>Trustee in bankruptcy not to be auditor</sup> corporation under the *Bankruptcy Act* (Canada) or any partner or employer of or a related person to him shall be <sup>R.S.C. 1952, c. 14</sup> appointed or act as auditor of the corporation. *New.*

**171.**—(1) The auditor shall make such examination as will <sup>Annual audit</sup> enable him to report to the shareholders as required by subsection 2. R.S.O. 1960, c. 71, s. 82 (1).

(2) The auditor shall make a report to the shareholders on the financial statement, other than the part thereof that relates to the period referred to in subclause ii of clause b of subsection 1 of section 172, to be laid before the corporation at any annual meeting during his term of office and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. R.S.O. 1960, c. 71, s. 82 (2); 1964, c. 10, s. 2; 1966, c. 28, s. 6 (1), *amended.* <sup>Auditor's report</sup>

(3) Where the report under subsection 2 does not contain <sup>Idem</sup> the unqualified opinion required thereby the auditor shall state in his report the reasons therefor.

(4) Where facts come to the attention of the officers or <sup>Facts discovered after statement</sup> directors which, if known prior to the date of the last annual general meeting of shareholders, would have required a material adjustment to the financial statement presented to such meetings, the officers or directors shall communicate such facts to the auditor who reported to the shareholders under this section.

Amendment  
of  
auditor's  
report

(5) On the receipt of facts furnished under subsection 4 or from any other source, the auditor shall, if in his opinion it is necessary, amend his report in respect of the financial statement in accordance with subsection 3 and the directors or, if they fail to do so within a reasonable time, the auditor shall mail such amended report to the shareholders. *New.*

Idem

(6) If the financial statement contains a statement of changes in net assets or a statement of source and application of funds, the auditor shall include in his report a statement whether in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein. 1966, c. 28, s. 6 (2), *amended*.

Idem

(7) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding corporation are included in the financial statement of the holding corporation, the report of the auditor of the holding corporation required by subsection 2 may refer to the reports of auditors of one or more of such subsidiaries, but such reference shall not derogate from the duty of the auditor of the holding corporation to comply with subsection 2. *New.*

Idem

(8) The auditor in his report shall make such statements as he considers necessary,

- (a) if the corporation's financial statement is not in agreement with its accounting records;
- (b) if the corporation's financial statement is not in accordance with the requirements of this Act;
- (c) if he has not received all the information and explanations that he has required; or
- (d) if proper accounting records have not been kept, so far as appears from his examination. R.S.O. 1960, c. 71, s. 82 (3).

Right of  
access, etc.

(9) The auditor of a corporation has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers and employees of the corporation such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. R.S.O. 1960, c. 71, s. 82 (4), *amended*.

Idem

(10) The auditor of a holding corporation has right of access at all times to all records, documents, accounts and vouchers of all subsidiaries of the corporation and is entitled to require from the directors, officers and employees of each such sub-

sidiary such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. *New.*

(11) Where a subsidiary referred to in subsection 10 is a body corporate to which this Act does not apply, the holding corporation shall make available to its auditor the records, documents, accounts and vouchers of that subsidiary and shall require the directors, officers and employees of that subsidiary to make available to its auditor the information and explanation required by subsection 10. Idem

(12) The auditor of a corporation is entitled to attend any meeting of shareholders of the corporation and to receive all notices and other communications relating to any such meeting that a shareholder is entitled to receive, and to be heard at any such meeting that he attends on any part of the business of the meeting that concerns him as auditor. R.S.O. 1960, c. 71, s. 82 (5). Auditor may attend shareholders' meetings

(13) Any shareholder of a corporation, whether or not he is entitled to vote at meetings of shareholders, may, by notice in writing to the corporation given five days or more before any meeting of shareholders, require the attendance of the auditor at such meeting at the corporation's expense, and in such event the auditor shall attend the meeting. Shareholder may require auditor's attendance at shareholders' meetings

(14) At any meeting of shareholders the auditor, if present, shall answer inquiries directed to him concerning the bases upon which he formed the opinion stated in the report made under subsection 2. *New.* Auditors must answer inquiries at shareholders' meetings

**172.**—(1) The directors shall lay before each annual meeting of shareholders, Information to be laid before annual meeting

(a) in the case of a corporation that is not offering its securities to the public, a financial statement for the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, made up of,

(i) a statement of profit and loss for such period

(ii) a statement of surplus for such period, and

(iii) a balance sheet as at the end of such period;

(b) in the case of a corporation that is offering its securities to the public, a comparative financial statement relating separately to,

- (i) the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, and
- (ii) the period covered by the financial year next preceding such latest completed financial year, if any,

made up of,

- (iii) a statement of profit and loss for each period,
- (iv) a statement of surplus for each period,
- (v) in the case of a corporation that is a mutual fund company or investment company as defined in the regulations under *The Securities Act, 1966*, a statement of changes in net assets for each period,
- (vi) in the case of a corporation other than one referred to in subclause v, a statement of source and application of funds for each period, and
- (vii) a balance sheet as at the end of each period;

(c) the report of the auditor to the shareholders; and

- (d) such further information respecting the financial position of the corporation as the articles or by-laws of the corporation require. R.S.O. 1960, c. 71, s. 83 (1); 1966, c. 28, s. 7 (1), *amended*.

Designation  
of  
statements

(2) It is not necessary to designate the statements referred to in subsection 1 as the statement of profit and loss, statement of surplus, statement of changes in net assets, statement of source and application of funds and balance sheet. 1966, c. 28, s. 7 (2), *amended*.

Auditor's  
report  
to be read

(3) The report of the auditor to the shareholders shall be read at the annual meeting and shall be open to inspection at the meeting by any shareholder. R.S.O. 1960, c. 71, s. 83 (3).

Statement  
of profit  
and loss

**173.**—(1) The statement of profit and loss to be laid before an annual meeting shall be drawn up so as to present fairly the results of the operations of the corporation for the period covered by the statement and so as to distinguish severally at least,



- (a) in the case of a corporation that is offering its securities to the public, sales or gross operating revenue;
- (b) the operating profit or loss before including or providing for other items of income or expense that are required to be shown separately;
- (c) income from investments in subsidiaries whose financial statements are not consolidated with those of the corporation;
- (d) income from investments in affiliated corporations other than subsidiaries;
- (e) income from other investments;
- (f) non-recurring profits and losses of significant amount including profits or losses on the disposal of capital assets and other items of a special nature to the extent that they are not shown separately in the statement of earned surplus;
- (g) any provision for depreciation or for obsolescence or for depletion;
- (h) amounts written off for goodwill or amortization of any other intangible assets to the extent that they are not shown separately in the statement of earned surplus;
- (i) interest on indebtedness initially incurred for a term of more than one year, including amortization of debt discount or premium and expense; and
- (j) taxes on income imposed by any taxing authority,

and shall show the net profit or loss for the financial period. R.S.O. 1960, c. 71, s. 84 (1); 1966, c. 28, s. 8 (1, 2), *amended*.

(2) Notwithstanding subsection 1, items of the natures <sup>Notes</sup> described in clauses *g* and *h* of subsection 1 may be shown by way of note to the statement of profit and loss. R.S.O. 1960, c. 71, s. 84 (2); 1966, c. 28, s. 8 (3).

(3) A corporation that is offering its securities to the public may apply to the Commission for an order permitting sales or gross operating revenue referred to in clause *a* of subsection 1 of this section or subclause *i* of clause *c* of subsection 1 of section 185 to be omitted from the statement of profit and loss or the interim financial statement, as the case may be, and the Commission may, on such terms and conditions as it may impose, permit such omission where it is satisfied that in the circumstances the disclosure of such information would be unduly detrimental to the interests of the corporation. 1966, c. 28, s. 8 (4), *part, amended*. <sup>Order for omission of sales or gross operating revenue</sup>

Mutual  
fund or  
investment  
companies  
1966, c. 142

(4) The statement of profit and loss of a mutual fund company or an investment company, as defined in the regulations under *The Securities Act, 1966*, shall also distinguish the average net investment income per share and an item of this nature may be shown by way of note to the statement of profit and loss. *New.*

Statement  
of surplus

**174.**—(1) The statement of surplus to be laid before an annual meeting shall be drawn up so as to present fairly the transactions reflected in the statement and shall show separately a statement of contributed surplus and a statement of earned surplus.

Contributed  
surplus

(2) The statement of contributed surplus shall be drawn up so as to include and distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period including,
  - i. the amount of surplus arising from the issue of shares or the reorganization of the corporation's issued capital, including *inter alia*,
    - a. the amount of premiums received on the issue of shares at a premium,
    - b. the amount of surplus realized on the purchase for cancellation of shares, and
  - ii. donations of cash or other property by shareholders.
3. The balance of such surplus at the end of the financial period.

Earned  
surplus

(3) The statement of earned surplus shall be drawn up so as to distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period and without restricting the generality of the foregoing at least the following:
  - i. The amount of the net profit or loss for the financial period.
  - ii. The amount of dividends declared on each class of shares.
  - iii. The amount transferred to or from reserves.

3. The balance of such surplus at the end of the financial period. R.S.O. 1960, c. 71, s. 85.

**175.**—(1) The statement of changes in net assets referred to in subclause v of clause *b* of subsection 1 of section 172 and clause *a* of subsection 1 of section 185 shall be drawn up so as to present fairly the information shown therein for the period and shall show separately at least, Statement  
of changes  
in net assets

- (a) net assets at beginning of the period;
- (b) net investment income or loss;
- (c) aggregate proceeds on sale of portfolio securities;
- (d) aggregate cost of portfolio securities owned at beginning of the period;
- (e) aggregate cost of purchases of portfolio securities;
- (f) aggregate cost of portfolio securities owned at end of the period;
- (g) aggregate cost of portfolio securities sold;
- (h) realized profit or loss on securities sold;
- (i) distributions, showing separately the amount out of net investment income and out of realized profits;
- (j) proceeds from shares issued;
- (k) cost of shares redeemed;
- (l) net increase or decrease in unrealized appreciation or depreciation of portfolio securities;
- (m) net assets at end of the period;
- (n) net asset value per share at end of the period;
- (o) net asset value per share at beginning of the period;
- (p) distribution per share out of net investment income;
- (q) distribution per share out of realized profits.

(2) Notwithstanding subsection 1, items of the natures described in clauses *n*, *o*, *p* and *q* of subsection 1 may be shown by way of note to the statement of changes in net assets. Note to  
statement  
*New.*

Statement  
of source  
and  
application  
of funds

**176.** The statement of source and application of funds referred to in subclause vi of clause *b* of subsection 1 of section 172 and clause *b* of subsection 1 of section 185 shall be drawn up so as to present fairly the information shown therein for the period, and shall show separately at least,

(a) funds derived from,

- (i) current operations,
- (ii) sale of non-current assets, segregating investments, fixed assets and intangible assets,
- (iii) issue of debt obligations or other indebtedness maturing more than one year after issue, and
- (iv) issue of shares; and

(b) funds applied to,

- (i) purchase of non-current assets, segregating investments, fixed assets and intangible assets,
- (ii) redemption or other retirement of debt obligations or repayment of other indebtedness maturing more than one year after issue,
- (iii) redemption or other retirement of shares, and
- (iv) payment of dividends. 1966, c. 28, s. 9.

Balance  
sheet

**177.—**(1) The balance sheet to be laid before an annual meeting shall be drawn up so as to present fairly the financial position of the corporation as at the date to which it is made up and so as to distinguish severally at least the following:

1. Cash.
2. Debts owing to the corporation from its directors, officers or shareholders, except debts of reasonable amount arising in the ordinary course of its business that are not overdue having regard to its ordinary terms of credit.
3. Debts owing to the corporation, whether on account of a loan or otherwise, from subsidiaries whose financial statements are not consolidated with those of the corporation.
4. Debts owing to the corporation, whether on account of a loan or otherwise, from affiliated corporations other than subsidiaries.



5. Other debts owing to the corporation segregating those that arose otherwise than in the ordinary course of its business.
6. Inventory, stating the basis of valuation.
7. Shares, bonds, debentures and other investments owned by the corporation, except those referred to in paragraphs 8 and 9, stating their nature and the basis of their valuation and showing separately those that are marketable with a notation of their market value.
8. Securities of subsidiaries whose financial statements are not consolidated with those of the corporation, stating the basis of valuation.
9. Securities of affiliated corporations other than subsidiaries, stating the basis of valuation.
10. Lands, buildings, and plant and equipment, stating the basis of valuation, whether cost or otherwise, and, if valued on the basis of an appraisal, the date of appraisal, the name of the appraiser, the basis of the appraisal value and, if such appraisal took place within five years preceding the date to which the balance sheet is made up, the disposition in the accounts of the corporation of any amounts added to or deducted from such assets on appraisal and also the amount or amounts accumulated in respect of depreciation, obsolescence and depletion.
11. There shall be stated under separate headings, in so far as they are not written off,
  - i. expenditures on account of future business,
  - ii. any expense incurred in connection with any issue of shares,
  - iii. any expense incurred in connection with any issue of debt obligations, including any discount thereon, and
  - iv. any one or more of the following: goodwill, franchises, patents, copyrights, trade marks and other intangible assets and the amount if any, by which the value of any such assets has been written up within a period of five years preceding the date to which the balance sheet is made up.

12. The aggregate amount of any outstanding loans or guarantees under clauses *c* and *d* of subsection 2 of section 17.
13. Bank loans and overdrafts.
14. Debts owing by the corporation on loans from its directors, officers or shareholders.
15. Debts owing by the corporation to subsidiaries whose financial statements are not consolidated with those of the corporation, whether on account of a loan or otherwise.
16. Debts owing by the corporation to affiliated corporations other than subsidiaries whether on account of a loan or otherwise.
17. Other debts owing by the corporation, segregating those that arose otherwise than in the ordinary course of its business.
18. Liability for taxes, including the estimated liability for taxes in respect of the income of the period covered by the statement of profit and loss.
19. Dividends declared but not paid.
20. Deferred income.
21. Debt obligations issued by the corporation, stating the interest rate, the maturity date, the amount outstanding and the existence of sinking fund, redemption requirements and conversion rights, if any.
22. The authorized capital, giving the number of each class of shares and a brief description of each such class, and indicating therein any class of shares that is redeemable and the redemption price thereof.
23. The issued capital, giving the number of shares of each class issued and outstanding and the amount received therefor that is attributable to capital, and showing,
  - i. the number of shares of each class issued since the date of the last preceding balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration, and

ii. where any shares issued before this Act comes into force have not been fully paid,

a. the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and

b. the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid.

24. Contributed surplus.

25. Earned surplus.

26. Reserves, showing the amounts added thereto and the amounts deducted therefrom during the financial period.

27. The number of common shares purchased and the number of the common shares resold since the date of the last preceding balance sheet, giving the date of each such purchase and resale and the price at which each such purchase or resale was made. R.S.O. 1960, c. 71, s. 86 (1); 1966, c. 28, s. 10 (1-3), *amended*.

(2) Explanatory information or particulars of any item <sup>Notes</sup> mentioned in subsection 1 may be shown by way of note to the balance sheet. R.S.O. 1960, c. 71, s. 86 (2).

**178.**—(1) There shall be stated by way of note to the <sup>Notes to financial statement</sup> financial statement particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of any of the statements with any of those for the preceding period, and the effect, if material, of any such change upon the profit or loss for the period. R.S.O. 1960, c. 71, s. 87 (1).

(2) For the purpose of subsection 1, a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period, even though such change did not have a material effect upon the profit or loss for the period. 1962-63, c. 24, s. 3 (1). <sup>Change in accounting practice</sup>

(3) Where applicable, the following matters shall be referred <sup>Idem</sup> to in the financial statement or by way of note thereto:

1. The basis of conversion of amounts from currencies other than the currency in which the financial statement is expressed.
2. Foreign currency restrictions that affect the assets of the corporation.
3. Contractual obligations that will require abnormal expenditures in relation to the corporation's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts.
4. Material contractual obligations in respect of long-term leases, including, in the year in which the transaction was effected, the principal details of any sale and lease transaction.
5. Contingent liabilities, stating their nature and, where practicable, the approximate amounts involved.
6. Any liability secured otherwise than by operation of law on any asset of the corporation, stating the liability so secured.
7. Any default of the corporation in principal, interest, sinking fund or redemption provisions with respect to any issue of its debt obligations or credit agreements.
8. The gross amount of arrears of dividends on any class of shares and the date to which such dividends were last paid.
9. Where a corporation has contracted to issue shares or has given an option to purchase shares, the class and number of shares affected, the price and the date for issue of the shares or exercise of the option.
10. Where a corporation has contracted to purchase or resell common shares, the number of shares affected and price and date for the purchase or resale.
11. The aggregate direct remuneration paid or payable by the corporation and its subsidiaries whose financial statements are consolidated with those of the corporation to the directors and the senior officers and, as a separate amount, the aggregate direct remuneration paid or payable to such directors and senior officers by the subsidiaries of the corporation whose financial statements are not consolidated with those of the corporation.



12. In the case of a holding corporation, the aggregate of any shares in, and the aggregate of any debt obligations of, the holding corporation held by subsidiary corporations whose financial statements are not consolidated with those of the holding corporation.
13. The amount of any loans by the corporation, or by a subsidiary corporation, otherwise than in the ordinary course of business, during the corporation's financial period, to the directors or officers of the corporation.
14. Any restriction by the articles or by-laws of the corporation or by contract on the payment of dividends that is significant in the light of the corporation's financial position.
15. Any event or transaction, other than one in the normal course of business operations, between the date to which the financial statement is made up and the date of the auditor's report thereon that materially affects the financial statement. R.S.O. 1960, c. 71, s. 87 (2); 1962-63, c. 24, s. 3 (2); 1966, c. 28, s. 11 (1).
16. In the case of a corporation that is offering its securities to the public, the amount of any obligation for pension benefits arising from service before the date of the balance sheet, whether or not such obligation has been provided for in the accounts of the corporation, the manner in which the corporation proposes to satisfy such obligation and the basis on which it has charged or proposes to charge the related costs against operations. 1966, c. 28, s. 11 (2), *amended*.
17. Brief particulars of any action to which the corporation is a party commenced under section 99 during the period. *New*.

(4) A note to a financial statement is a part of it. R.S.O. <sup>Idem</sup> 1960, c. 71, s. 87 (3).

**179.**—(1) A corporation, in this section referred to as <sup>Consolidated</sup> "the holding corporation", may include in the financial statement to be submitted at an annual meeting the assets and liabilities and income and expense of any one or more of its subsidiaries, making due provision for minority interests, if any, and indicating in such financial statement that it is presented in consolidated form. <sup>financial statement</sup>

Non-  
consolidated  
financial  
statements

(2) Where the assets and liabilities and income and expense of any one or more subsidiaries of the holding corporation are not so included in the financial statement of the holding corporation,

(a) the financial statement of the holding corporation shall include a statement setting forth,

- (i) the reason why the assets and liabilities and income and expense of such subsidiary or subsidiaries are not included in the financial statement of the holding corporation,
- (ii) if there is only one such subsidiary, the amount of the holding corporation's proportion of the profit or loss of the subsidiary for the financial period coinciding with or ending in the financial period of the holding corporation, or, if there is more than one such subsidiary, the amount of the holding corporation's proportion of the aggregate profits less losses, or losses less profits, of all the subsidiaries for the respective financial periods coinciding with or ending in the financial period of the holding corporation,
- (iii) the amount included as income from such subsidiary or subsidiaries in the statement of profit and loss of the holding corporation and the amount included therein as a provision for the loss or losses of the subsidiary or subsidiaries,
- (iv) if there is only one such subsidiary, the amount of the holding corporation's proportion of the undistributed profits of the subsidiary earned since the acquisition of the shares of the subsidiary by the holding corporation to the extent that such amount has not been taken into the accounts of the holding corporation, or, if there is more than one such subsidiary, the amount of the holding corporation's proportion of the aggregate undistributed profits of all the subsidiaries earned since the acquisition of their shares by the holding corporation less its proportion of the losses, if any suffered by any subsidiary since the acquisition of its shares to the extent that such amount has not been taken into the accounts of the holding corporation,

- (v) any qualifications contained in the report of the auditor of any such subsidiary on its financial statement for the financial period ending as aforesaid, and any note or reference contained in that financial statement to call attention to a matter that, apart from the note or reference, would properly have been referred to in such a qualification, in so far as the matter that is the subject of the qualification or note is not provided for by the corporation's own financial statement and is material from the point of view of its shareholders;
- (b) if for any reason the directors of the holding corporation are unable to obtain such information as is necessary for the preparation of the statement that is to be included in the financial statement of the holding corporation, the directors who sign the financial statement shall so report in writing and their report shall be included in the financial statement in lieu of the statement;
- (c) if, in the opinion of the auditor of the holding corporation, adequate provision has not been made in the financial statement of the holding corporation for the holding corporation's proportion,
  - (i) where there is only one such subsidiary, of the loss of the subsidiary suffered since acquisition of its shares by the holding corporation, or
  - (ii) where there is more than one such subsidiary, of the aggregate losses suffered by the subsidiaries since acquisition of their shares by the holding corporation in excess of its proportion of the undistributed profits, if any, earned by any of the subsidiaries since such acquisition,

the auditor shall state in his report the additional amount that in his opinion is necessary to make full provision therefor. R.S.O. 1960, c. 71, s. 89, *amended*.

(3) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding corporation are included in the financial statement of the holding corporation, true copies of the latest financial statement of the subsidiary or subsidiaries shall be kept on hand by the holding corporation at its head office and shall be open to examination by the shareholders of the holding corporation

Copies of  
subsidiary  
statements

on request during the normal business hours of the holding corporation, but the directors of the holding corporation may by resolution refuse the right of such examination if the examination would be unduly detrimental to the interests of the corporation or the subsidiary or subsidiaries.

Setting  
aside  
resolution

(4) A resolution referred to in subsection 3 may, on the application of any shareholder,

- (a) be set aside by the Commission where the corporation is offering its securities to the public; or
- (b) be set aside by the court where the corporation is not offering its securities to the public. R.S.O. 1960, c. 71, s. 89 (2) (c), *amended*.

Insigni-  
ficant  
circum-  
stances

**180.** Notwithstanding sections 173 to 179, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance. R.S.O. 1960, c. 71, s. 88.

Reserve

**181.** In a financial statement, the term "reserve" shall be used to describe only,

- (a) amounts appropriated from earned surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred;
- (b) amounts appropriated from earned surplus pursuant to the articles or by-laws of the corporation for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred; and
- (c) amounts appropriated from earned surplus in accordance with the terms of a contract and that can be restored to the earned surplus when the conditions of the contract are fulfilled. R.S.O. 1960, c. 71, s. 91.

Audit  
committee

**182.—(1)** The directors of a corporation that is offering its securities to the public shall elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom a majority shall not be officers or employees of the corporation or an affiliate of the corporation, to hold office until the next annual meeting of the shareholders.



(2) The members of the audit committee shall elect a chair- <sup>Chairman</sup> man from among their number.

(3) The corporation shall submit the financial statement <sup>Review</sup> to the audit committee for its review and the financial statement shall thereafter be submitted to the board of directors.

(4) The auditor has the right to appear before and be heard <sup>Hearing of auditor</sup> at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

(5) Upon the request of the auditor, the chairman of the <sup>Idem</sup> audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or shareholders. *New.*

**183.** The financial statement shall be approved by the <sup>Approval by directors</sup> board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, or by the director where there is only one and the auditor's report shall be attached to or accompany the financial statement. R.S.O. 1960, c. 71, s. 92, *amended.*

**184.**—(1) A corporation that is offering its securities to <sup>Mailing of financial statement to shareholders</sup> the public shall, twenty-one days or more before the date of the annual meeting of shareholders, send by prepaid mail to each shareholder at his latest address as shown on the records of the corporation a copy of the financial statement and a copy of the auditor's report.

(2) A shareholder of a corporation that is not offering its <sup>Financial statement, on demand</sup> securities to the public is entitled to be furnished by the corporation on demand with a copy of the documents mentioned in subsection 1. R.S.O. 1960, c. 71, s. 93, *amended.*

**185.**—(1) A corporation that is offering its securities to <sup>Comparative interim financial statement</sup> the public shall send to each shareholder a copy of a comparative interim financial statement for the six-month period that commenced on the date of incorporation or, if the corporation has completed a financial year, for the six-month period that commenced immediately after the end of the last completed financial year and for the comparable six-month period, if any, in the twelve months immediately preceding the commencement of the six-month period in respect of which such interim financial statement is issued, made up of,

- (a) in the case of a corporation that is a mutual fund company or investment company as defined in the

1966, c. 142

regulations under *The Securities Act, 1966*, a statement of changes in net assets for each period that complies with section 175;

- (b) in the case of a corporation other than one referred to in clause *a*, a statement of source and application of funds for each period that complies with section 176; and
- (c) sufficient relevant financial information in summary form to present fairly the results of the operations of the corporation for each period, including,
  - (i) a statement of sales or gross operating revenue,
  - (ii) extraordinary items of income or expense,
  - (iii) net income before taxes on income imposed by any taxing authority,
  - (iv) taxes on income imposed by any taxing authority, and
  - (v) net profit or loss. 1966, c. 28, s. 13, *part, amended*.

Variation  
of period

(2) Upon the application of any interested person, the Commission may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order upon such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part a corporation from the requirements of subsection 1 or permitting the comparative interim financial statement of a corporation to be for such period other than six months that is specified in the order. *New*.

Idem

(3) There shall be stated by way of note to the interim financial statement required by subsection 1 particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of such statement with the statement for the preceding period or with the interim financial statement for a part of the preceding period, and the effect, if material, of any such change upon the profit or loss for the period covered by the interim financial statement.

Idem

(4) For the purpose of subsection 3, a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period or part thereof,

even though such change did not have a material effect upon the profit or loss for the period covered by the interim financial statement.

(5) The interim financial statement required by subsection 1 shall be sent by prepaid mail to each shareholder, within sixty days of the date to which it is made up, at his latest address as shown on the records of the corporation. 1966, c. 28, s. 13, *part, amended*. Idem

#### INVESTIGATIONS

**186.**—(1) Upon application by a shareholder of a corporation, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the corporation or the holders of its securities to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as to the court seems fit, appointing an inspector to investigate the affairs and management of the corporation or any affiliate of the corporation, or both, and to audit the accounts and records of the corporation or any affiliate thereof named in the order. R.S.O. 1960, c. 71, s. 321 (1), *amended*. Investigations and audits

(2) An order may be made under subsection 1 whether or not there has been disclosure to the shareholders of the corporation of information relating to any matter on the basis of which the order is made. *New*. Idem

(3) Every director, officer, agent, employee, banker and auditor of the corporation or of any affiliate of the corporation named in the order and every other person shall produce for the examination of the inspector all accounts and records of or relating to the corporation or affiliate in their custody or control. Production of accounts and records

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the corporation or affiliate in relation to its affairs, management, accounts and records. R.S.O. 1960, c. 71, s. 321 (7, 8), *amended*. Examination may be upon oath

(5) The court may, on the application of the inspector, on such terms and conditions as it sees fit, order any person not mentioned in subsection 4 to attend and be examined under oath before the inspector on any matter relevant to the investigation or audit. *New*. Court order for examination

(6) Every director, officer, agent or employee who refuses to produce any account or record referred to in subsection 3 and every banker or auditor who refuses to produce any account or record referred to in subsection 4 and every person examined under subsection 5 who refuses to answer any Offences

question related to the affairs and management of the corporation or any affiliate is guilty of an offence under section 259, in addition to any other liability to which he is subject. R.S.O. 1960, c. 71, s. 321 (9), *amended*.

Inspector's  
report

(7) The inspector shall make a report to the court and shall forward a copy of the report to the corporation and any affiliate of the corporation named in the order and to the person who made the application under subsection 1. *New*.

Corporation  
may appoint  
inspector  
for same  
purpose

**187.**—(1) A corporation may, by resolution passed at an annual meeting of shareholders or a general meeting of shareholders called for that purpose, appoint an inspector to investigate its affairs and management.

Powers  
and  
duties of  
inspector

(2) The inspector appointed under subsection 1 has the same powers and shall perform the same duties as an inspector appointed under section 186 and he shall make his report in such manner and to such persons as the corporation by resolution of the shareholders directs. R.S.O. 1960, c. 71, s. 321 (5, 6), *amended*.

Report  
admissible  
in  
proceedings

**188.** A copy of the report of the inspector authenticated by the court or in the case of an investigation under section 173 by the inspector is admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report. R.S.O. 1960, c. 71, s. 321 (10), *amended*.

## REORGANIZATION

### *Amendment of Articles*

Amend-  
ments

**189.**—(1) A corporation may, from time to time, amend its articles of incorporation to,

- (a) change its name;
- (b) extend, limit or otherwise vary its objects;
- (c) increase its authorized capital;
- (d) decrease,
  - (i) its authorized capital by cancelling shares, whether issued or unissued and whether with par value or without par value, or by reducing the par value of issued or unissued shares, or
  - (ii) its issued capital, if it has shares without par value,



and, where it has more capital than it requires, to authorize the repayment of capital to the shareholders to the extent that the issued capital is decreased in any way under this clause;

- (e) redivide its authorized capital into shares of lesser or greater par value;
- (f) consolidate or subdivide any of its shares without par value;
- (g) change any of its shares with par value into shares without par value;
- (h) change any of its shares without par value into shares with par value;
- (i) redesignate any class of shares;
- (j) reclassify any shares with or without par value into shares of a different class;
- (k) delete or vary any provision in its articles;
- (l) provide for any other matter or thing that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the corporation;
- (m) provide for restrictions on the transfer of the shares or any class thereof.

(2) An amendment under clauses *a* to *l* of subsection 1 shall be authorized by a special resolution. <sup>1 Authorization</sup>

(3) An amendment under clause *m* of subsection 1 shall be authorized by a resolution of the board of directors and confirmed in writing, <sup>Idem</sup>

(a) by 100 per cent of the shareholders; or

(b) by at least 95 per cent of the shareholders holding at least 95 per cent of the issued capital,

but, in the case of confirmation under clause *b*, the resolution is not effective until twenty-one days notice of the resolution has been given by sending the notice to each shareholder to his latest address as shown on the records of the corporation and only if at the expiration of the twenty-one days none of the shareholders has dissented in writing to the corporation.

(4) If the amendment is to delete or vary a preference, right, condition, restriction, limitation or prohibition attaching to a class of special shares or to create special shares <sup>Additional authorization for variation of rights of special shareholders</sup>

ranking in any respect in priority to or on a parity with an existing class of special shares, then, in addition to the confirmation required by subsection 2, the resolution is not effective until it has been confirmed,

- (a) by 100 per cent of the holders of the shares of such class or classes of shares in writing; or
- (b) in writing by at least 95 per cent of the holders of the shares of such class or classes of shares holding at least 95 per cent of the issued shares of such class or classes and after twenty-one days notice of the resolution and confirmation has been given by sending the notice to each of the holders of shares of such class or classes to his latest address as shown on the records of the corporation and only if at the expiration of twenty-one days none of the holders of such class or classes has dissented in writing to the corporation; or
- (c) if the articles so provide, by at least two-thirds of the votes cast at a meeting of the holders of such class or classes of shares duly called for that purpose or such greater proportion of the votes cast as the articles provide,

and by such additional authorization as the articles provide. R.S.O. 1960, c. 71, s. 33 (1-5), *amended*.

**Exception**

(5) Where an amendment to the articles that could be made under this section is made as part of an arrangement under sections 193, 194 and 195, the procedure provided for in those sections and not the procedure provided for in this section applies to the amendment.

**Special  
Act cor-  
porations  
excepted**

(6) This section does not apply to a corporation incorporated by special Act, except that a corporation incorporated by special Act may under this section amend its articles to change its name. R.S.O. 1960, c. 71, s. 33 (8, 9), *amended*.

**Articles of  
amendment**

**190.**—(1) For the purpose of bringing an amendment to the articles into effect, the corporation shall deliver to the Minister, within six months after the resolution has become effective, articles of amendment in duplicate, executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the articles of amendment, setting out,

- (a) the name of the corporation;

- (b) a certified copy of the resolution;
- (c) that the amendment has been duly authorized as required by subsections 2, 3 and 4 of section 189; and
- (d) the date of the confirmation of the resolution by the shareholders. R.R.O. 1960, Reg. 61, s. 35, *amended*.

(2) Where the articles of amendment are to change the <sup>Change of name</sup> name of the corporation, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the corporation is not insolvent. R.R.O. 1960, Reg. 60, s. 4 (3), *amended*.

(3) Where the articles of amendment are to decrease the <sup>Decrease of capital</sup> authorized or issued capital, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the corporation is not insolvent and that the decrease will not render the corporation insolvent, and, if required by the Minister, by evidence that establishes to his satisfaction that no creditors object to the amendment. R.S.O. 1960, c. 71, s. 34.

(4) Where the articles of amendment are to make any <sup>Pro forma balance sheet</sup> change in the authorized or issued capital, the articles of amendment shall, if required by the Minister, be accompanied by a *pro forma* balance sheet after giving effect to the proposed change. R.R.O. 1960, Reg. 60, s. 4 (1) (d), *amended*.

**191.**—(1) If the articles of amendment conform to law, <sup>Certificate of amendment</sup> the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles of amendment the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of amendment to which he shall affix the other duplicate. *New*.

(2) The amendment becomes effective upon the date set <sup>Effect of certificate</sup> forth in the certificate of amendment and the articles of incorporation are amended accordingly. R.S.O. 1960, c. 71, s. 4, *amended*.

#### *Restatement of Articles*

**192.**—(1) A corporation may at any time restate its <sup>Restatement of articles</sup> articles of incorporation as theretofore amended.

Filing of  
restatement

(2) For the purposes of bringing the restated articles into effect, the corporation shall deliver to the Minister the restated articles in duplicate, executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the restated articles, setting out,

- (a) all the provisions that are then set out in the original articles of incorporation as theretofore amended; and
- (b) a statement that the restated articles correctly set out without change the corresponding provisions of the original articles as theretofore amended.

Restatement  
of  
certificate

(3) If the restated articles of incorporation conform to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the restated articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a restated certificate of incorporation to which he shall affix the other duplicate.

Effect of  
certificate

(4) The restated articles of incorporation become effective upon the date set forth in the restated certificate and supersede the original articles of incorporation and all amendments thereto. *New.*

### *Arrangements*

Interpre-  
tation

**193.**—(1) In this section and sections 194 and 195, "arrangement" includes a reorganization of the authorized capital of a corporation and also includes,

- (a) the consolidation of shares of different classes;
- (b) the reclassification of shares of one class into shares of another class;
- (c) the variation of the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares of any class; and
- (d) a reconstruction under which a corporation transfers or sells, or proposes to transfer or to sell, to another body corporate the whole or a substantial part of its



undertaking for a consideration consisting in whole or in part of securities of the other body corporate and under which it proposes to distribute a part of that consideration among its shareholders of any class, or to cease carrying on its undertaking or that part of its undertaking so transferred or sold or so proposed to be transferred or sold. R.S.O. 1960, c. 71, s. 95 (1).

(2) Subject to section 195, a corporation may make an <sup>Arrangement</sup> arrangement,

(a) that affects the rights of all its shareholders; or

(b) that affects the rights of only holders of a particular class of its shares. R.S.O. 1960, c. 71, s. 95 (2), *amended*.

(3) Where a corporation proposing an arrangement has <sup>Subsidiaries</sup> one or more subsidiaries, any one or more of the subsidiaries may join in the arrangement with the holding corporation in one scheme. *New*.

**194.**—(1) A corporation proposing an arrangement shall <sup>Scheme of arrangement</sup> prepare a scheme for the purpose, prescribing in detail what is to be done and the manner in which it is to be effected.

(2) The corporation shall submit the scheme to the share- <sup>Submission to share-holders</sup> holders, or to the class of them affected, as the case may be, at a meeting duly called by the corporation for the purpose of considering the scheme. *New*.

(3) Where a meeting of the shareholders or of any class or <sup>Contents of notice calling meeting</sup> classes of shareholders is called under subsection 2, the notice calling the meeting shall contain a statement explaining the effect of the arrangement and in particular stating any interest of the directors of the corporation, whether as directors or as shareholders of the corporation or otherwise, and the effect thereon of the arrangement in so far as it is different from the effect on the like interest of other persons. R.S.O. 1960, c. 71, s. 95 (3).

(4) If the shareholders of the corporation or of the class <sup>Approval by share-holders</sup> or classes affected, as the case may be, present in person or by proxy at the meeting, agree, by a vote of at least three-fourths of the shares of each class represented, to the arrangement either as proposed or as varied at the meeting, the scheme shall be deemed to have been adopted. R.S.O. 1960, c. 71, s. 95 (4), *amended*.

- Approval by court (5) Where the scheme is deemed to have been adopted, the corporation may apply to the court for an order approving the scheme.
- Notice (6) The corporation shall notify the Minister and unless the court otherwise directs, each of its dissentient shareholders, in such manner as the court may direct, of the time and place when the application for the approving order will be made.
- Counsel (7) The Minister may appoint counsel to assist the court upon the hearing of an application under this section. *New.*
- Order (8) The court shall hear and determine the matter and may approve the scheme as presented or may approve it, subject to compliance with such terms and conditions as it thinks fit, having regard to the rights and interests of the dissentient shareholders, or any of them. R.S.O. 1960, c. 71, s. 95 (4, 5), *amended.*
- Filing of statement to amend articles **195.**—(1) For the purpose of bringing a scheme into effect, the corporation shall, within six months of the approval of the scheme by the court, deliver to the Minister a statement in duplicate executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation, and verified by affidavit of one of the officers or directors signing the statement, setting out,
- (a) the name of the corporation;
  - (b) a certified copy of the scheme;
  - (c) a certified copy of the order of the court; and
  - (d) that the terms and conditions, if any, to which the scheme is made subject by the order have been complied with.
- Issuance of certificate of amendment (2) If the statement conforms to law, the Minister shall, when all prescribed fees have been paid,
- (a) endorse on each duplicate of the statement the word "Filed" and the day, month and year of the filing thereof;
  - (b) file one of the duplicates in his office; and
  - (c) issue to the corporation or its agent a certificate of the filing to which he shall affix the other duplicate.

(3) Upon the issuance of the certificate of filing, the scheme becomes effective and constitutes an amendment to the articles. *New.* Effect of certificate of amendment

### *Amalgamations and Continuations*

**196.**—(1) Any two or more corporations, including holding or subsidiary corporations, may amalgamate and continue as one corporation. Amalgamation

(2) The corporations proposing to amalgamate shall enter into an agreement for the amalgamation, prescribing its terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect, and, in particular the agreement shall set out, Agreement

- (a) the name of the amalgamated corporation;
- (b) the period of duration of the amalgamated corporation if other than perpetual;
- (c) the place in Ontario where the head office of the amalgamated corporation is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district, and giving the street and number, if any;
- (d) the authorized capital of the amalgamated corporation, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share, or, where the shares are to be without par value, the consideration, if any, exceeding which each share may not be issued or the aggregate consideration, if any, exceeding which all the shares of each class may not be issued;
- (e) where there are to be special shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions applying to them or each class of them;
- (f) the restrictions, if any, to be placed on the transfer of its shares, or any class thereof;
- (g) the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the amalgamated corporation;

- (h) the time and manner of election of the subsequent directors of the amalgamated corporation;
- (i) whether or not the by-laws of the amalgamated corporation are to be those of one of the amalgamating corporations, and, if not, a copy of the proposed by-laws of the amalgamated corporation;
- (j) the manner in which the issued shares of each of the amalgamating corporations are to be converted into issued shares of the amalgamated corporation;
- (k) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation. R.S.O. 1960, c. 71, s. 96 (1, 2), *amended*.

Shares of  
amalgama-  
ting  
corporation  
held by  
another

(3) Where shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement shall provide for the cancellation of such shares upon the amalgamation becoming effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated corporation. *New*.

Approval of  
agreement

(4) An amalgamation agreement is not effective until approved by a special resolution of each of the amalgamating corporations. R.S.O. 1960, c. 71, s. 96 (3), *amended*.

Approval  
by special  
shareholders

(5) Where the carrying out of the amalgamation agreement would result in the deletion or variation of a preference, right, condition, restriction, limitation or prohibition attaching to a class of issued special shares of any of the amalgamating corporations or in the creation of special shares of the amalgamated corporation ranking in any respect in priority to, or on a parity with, any existing class of special shares of any of the amalgamating corporations, the agreement is not effective until it is approved in the manner provided by subsection 4 of section 189 in addition to the approval required by subsection 4. *New*.

Filing of  
articles of  
amalgama-  
tion

**197.**—(1) For the purpose of bringing an amalgamation into effect, the amalgamating corporations shall, within six months after the amalgamation agreement has become effective, deliver to the Minister articles of amalgamation in duplicate executed under the seal of each of the amalgamating corporations and signed by two officers, or by one director and one officer, of each of the amalgamating corporations and verified by affidavit of one of the officers or directors signing the articles of amalgamation for each amalgamating corporation, setting out,



- (a) the names of each of the amalgamating corporations;
- (b) a certified copy of the amalgamation agreement;
- (c) that the agreement has been duly approved as required by section 196; and
- (d) the dates on which the amalgamation agreement was approved by the shareholders of each of the amalgamating corporations.

(2) The articles of amalgamation shall be accompanied by evidence that establishes to the satisfaction of the Minister that each of the amalgamating corporations is not insolvent and, if required by the Minister, a *pro forma* balance sheet after giving effect to the proposed amalgamation. Evidence of solvency

(3) If the articles of amalgamation conform to law, the Minister shall, when all prescribed fees have been paid, Issuance of certificate of amalgamation

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;

(b) file one of the duplicates in his office; and

- (c) issue to the amalgamated corporation or its agent a certificate of amalgamation to which he shall affix the other duplicate. *New.*

(4) Upon the date set forth in the certificate of amalgamation, Effect of certificate

- (a) the amalgamation becomes effective and the amalgamating corporations are amalgamated and continue as one corporation under the terms and conditions prescribed in the amalgamation agreement;
- (b) the amalgamated corporation possesses all the property, rights, privileges and franchises and is subject to all liabilities, contracts, disabilities and debts of each of the amalgamating corporations;
- (c) the issued capital of the amalgamated corporation is, subject to the decrease provided for in subsection 3 of section 196, equal to the aggregate of the issued capital of each of the amalgamating corporations immediately before the amalgamation becomes effective; and

- (d) the articles of incorporation of each of the amalgamated corporations are amended to the extent necessary to give effect to the terms and conditions of the amalgamation agreement. R.S.O. 1960, c. 71, s. 96 (4), *amended*.

Certificate  
of con-  
tinuation

**198.**—(1) A corporation incorporated under the laws of any jurisdiction other than Ontario may, if it appears to the Minister to be thereunto authorized by the laws of the jurisdiction in which it was incorporated, apply to the Minister for a certificate continuing it as if it has been incorporated under this Act, and the Minister may issue the certificate of continuation on application supported by such material as appears satisfactory, and the certificate may be issued on such terms and subject to such limitations and conditions and contain such provisions as appear to the Minister to be fit and proper. R.S.O. 1960, c. 71, s. 323 (3), *amended*.

Effect of  
certificate  
of con-  
tinuation

(2) Upon the date set forth in a certificate of continuation issued under subsection 1, this Act applies to the corporation to the same extent as if it had been incorporated under this Act. *New*.

Transfer of  
Ontario  
corporations

**199.**—(1) A corporation incorporated under the laws of Ontario may, if authorized by a special resolution, by the Minister and by the laws of any other jurisdiction, apply to the proper officer of that other jurisdiction for an instrument of continuation continuing the corporation as if it had been incorporated under the laws of that other jurisdiction.

Notice

(2) The corporation shall file with the Minister a notice of the issue of the instrument of continuation, and on and after the date of the filing of the notice this Act ceases to apply to that corporation.

Application

(3) This section applies only in respect of a jurisdiction that has legislation in force that permits corporations incorporated under its laws to apply for an instrument of continuation under the laws of Ontario. 1961-62, c. 21, s. 4, *amended*.

Rights of  
creditors  
preserved

**200.** All rights of creditors against the property, rights and assets of a corporation amalgamated under section 196 or continued under section 198 and all liens upon its property, rights and assets are unimpaired by such amalgamation or continuation, and all debts, contracts, liabilities and duties of the corporation thenceforth attach to the amalgamated or continued corporation and may be enforced against it. R.S.O. 1960, c. 71, s. 324.

## DISSOLUTION

*Winding Up*

**201.** In sections 203 to 246, "contributory" means a person who is liable to contribute to the property of a corporation in the event of the corporation being wound up under this Act. R.S.O. 1960, c. 71, s. 241. Interpretation

*Voluntary Winding Up*

**202.** Sections 203 to 215 apply to corporations being wound up voluntarily. *New.* Application of ss. 203-215

**203.**—(1) Where the shareholders of a corporation by a majority of the votes cast at a general meeting duly called for that purpose, or by such greater proportion of the votes cast as the articles provide, pass a resolution requiring the corporation to be wound up, the corporation may be wound up voluntarily. Voluntary winding up

(2) At such meeting the shareholders shall appoint one or more persons, who may be directors, officers or employees of the corporation, as liquidator of the estate and effects of the corporation for the purpose of winding up its affairs and distributing its property, and may at that or any subsequent general meeting fix his remuneration and the costs, charges and expenses of the winding up. R.S.O. 1960, c. 71, s. 243, *amended.* Appointment of liquidator

(3) On the application of any shareholder or creditor of the corporation or of the liquidator, the court may review the remuneration of the liquidator and, whether or not the remuneration has been fixed by resolution, the court may fix and determine the remuneration at such amount as it thinks proper. *New.* Review of remuneration by court

(4) A corporation shall file notice of a resolution requiring the voluntary winding up of a corporation with the Minister within ten days after the resolution has been passed and shall publish the notice in *The Ontario Gazette* within twenty days after the resolution has been passed. R.S.O. 1960, c. 71, s. 244 (1), *amended.* Publication of notice of winding up

**204.** A corporation being wound up voluntarily may, in general meeting, by resolution, delegate to any committee of its shareholders, contributories or creditors, hereinafter referred to as inspectors, the power of appointing the liquidator and filling any vacancy in the office of liquidator, or may by a like resolution enter into any arrangement with its creditors with respect to the powers to be exercised by the liquidator and the manner in which they are to be exercised. R.S.O. 1960, c. 71, s. 245. Inspectors

Vacancy in  
office of  
liquidator

**205.** If a vacancy occurs in the office of liquidator by death, resignation or otherwise, the shareholders in general meeting may, subject to any arrangement the corporation may have entered into with its creditors upon the appointment of inspectors, fill such vacancy, and a general meeting for that purpose may be called by the continuing liquidator, if any, or by any shareholder or contributory, and shall be deemed to have been duly held if called in the manner prescribed by the articles or by-laws of the corporation, or, in default thereof, in the manner prescribed by this Act, for calling general meetings of the shareholders of the corporation. R.S.O. 1960, c. 71, s. 246, *amended*.

Removal of  
liquidator

**206.** The shareholders of the corporation may by a majority of the votes cast at a general meeting called for that purpose remove a liquidator appointed under section 203, 204 or 205, and in such case shall appoint another liquidator in his stead. R.S.O. 1960, c. 71, s. 247.

Commence-  
ment of  
winding up

**207.** A voluntary winding up commences at the time of the passing of the resolution requiring the winding up. R.S.O. 1960, c. 71, s. 248.

Corporation  
to cease  
business

**208.** A corporation being wound up voluntarily shall, from the commencement of its winding up, cease to carry on its undertaking, except in so far as may be required as beneficial for the winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidator, or alterations in the status of the shareholders of the corporation, taking place after the commencement of its winding up are void, but its corporate existence and all its corporate powers, notwithstanding that it is otherwise provided by its articles or by-laws, continue until its affairs are wound up. R.S.O. 1960, c. 71, s. 249, *amended*.

No proceed-  
ings against  
corporation  
after  
voluntary  
winding up  
except  
by leave

**209.** After the commencement of a voluntary winding up,

- (a) no action or other proceeding shall be commenced against the corporation; and
- (b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court imposes. R.S.O. 1960, c. 71, s. 250.

List of  
contribu-  
tories  
and calls

**210.—**(1) Upon a voluntary winding up, the liquidator,

- (a) shall settle the list of contributories;



(b) may, before he has ascertained the sufficiency of the property of the corporation, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay any sum that he considers necessary for satisfying the liabilities of the corporation and the costs, charges and expenses of winding up and for adjusting the rights of the contributories among themselves.

(2) A list settled by the liquidator under clause *a* of sub-section 1 is *prima facie* proof of the liability of the persons named therein to be contributories. List  
*prima facie*  
proof

(3) The liquidator in making a call under clause *b* of sub-section 1 may take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the call. R.S.O. 1960, c. 71, s. 251. Default  
on calls

**211.**—(1) The liquidator may, during the continuance of the voluntary winding up, call general meetings of the shareholders of the corporation for the purpose of obtaining their approval by resolution, or for any other purpose he thinks fit. Meetings of  
corporation  
during  
winding up

(2) Where a voluntary winding up continues for more than one year, the liquidator shall call a general meeting of the shareholders of the corporation at the end of the first year and of each succeeding year from the commencement of the winding up, and he shall lay before the meeting an account showing his acts and dealings and the manner in which the winding up has been conducted during the immediately preceding year. R.S.O. 1960, c. 71, s. 252, *amended*. Where  
winding up  
continues  
more than  
one year

**212.** The liquidator, with the approval of a resolution of the shareholders of the corporation passed in general meeting or with the approval of the inspectors, may make such compromise or other arrangement as the liquidator thinks expedient with any creditor or person claiming to be a creditor or having or alleging that he has a claim, present or future, certain or contingent, liquidated or unliquidated, against the corporation or whereby the corporation may be rendered liable. R.S.O. 1960, c. 71, s. 253, *amended*. Arrange-  
ments  
with  
creditors

**213.** The liquidator may, with the approval referred to in section 212, compromise all debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the corporation and any contributory, alleged contributory or other debtor or person who may be liable to the corporation and all questions in any way relating to or affecting the property of the corporation, Power to  
compromise  
with  
debtors  
and con-  
tributories

or the winding up of the corporation, upon the receipt of such sums payable at such times and generally upon such terms as are agreed, and the liquidator may take any security for the discharge of such debts or liabilities and give a complete discharge in respect thereof. R.S.O. 1960, c. 71, s. 254, *amended*.

Power to accept shares, etc., as consideration for sale of property to another body corporate

**214.**—(1) Where a corporation is proposed to be or is in the course of being wound up voluntarily and it is proposed to transfer the whole or a portion of its business or property to another body corporate, referred to in this subsection as the purchasing corporation, the liquidator of the first-mentioned corporation, with the approval of a resolution of the shareholders passed in general meeting of the corporation conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, may receive, in compensation or in part-compensation for the transfer, cash or shares or other like interest in the purchasing corporation or any other body corporate for the purpose of distribution among the creditors or shareholders of the corporation that is being wound up in the manner set forth in the arrangement, or may, in lieu of receiving cash or shares or other like interest, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing corporation or any other body corporate.

Confirmation of sale or arrangement

(2) A transfer made or arrangement entered into by the liquidator under this section is not binding on the shareholders of the corporation that is being wound up unless the shareholders or classes of shareholders, as the case may be, at a general meeting duly called for the purpose, by votes represented at least three-fourths of the shares or of each class of shares represented at the meeting, approve the transfer or arrangement and unless the transfer or arrangement is approved by an order made by the court on the application of the corporation.

Where resolution not invalid

(3) No resolution is invalid for the purposes of this section because it was passed before or concurrently with a resolution for winding up the corporation or for appointing the liquidator. R.S.O. 1960, c. 71, s. 255, *amended*.

Account of voluntary winding up to be made by liquidator to a general meeting

**215.**—(1) The liquidator shall make up an account showing the manner in which the winding up has been conducted and the property of the corporation disposed of, and thereupon shall call a general meeting of the shareholders of the corporation for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator, and the meeting shall be called in the manner

prescribed by the articles or by-laws or, in default thereof, in the manner prescribed by this Act for the calling of general meetings of shareholders.

(2) The liquidator shall within ten days after the holding <sup>Notice of holding of meeting</sup> of the meeting file a notice with the Minister stating that the meeting was held and the date thereof.

(3) Subject to subsection 4, on the expiration of three <sup>Dissolution</sup> months from the date of the filing of the notice the corporation is dissolved.

(4) At any time during the three-month period mentioned <sup>Extension</sup> in subsection 3, the court may, on the application of the liquidator or any other person interested, make an order deferring the date on which the dissolution of the corporation is to take effect to a date fixed in the order, and in such event the corporation is dissolved on the date so fixed. R.S.O. 1960, c. 71, s. 279 (1-4), *amended*.

(5) Notwithstanding anything in this Act, the court at <sup>Dissolution by court order</sup> any time after the affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order. R.S.O. 1960, c. 71, s. 280 (1), *amended*.

(6) The person on whose application an order was made <sup>Copy of extension order to be filed</sup> under subsection 4 or 5 shall within ten days after it was made file with the Minister a certified copy of the order. R.S.O. 1960, c. 71, s. 279 (5), *amended*.

#### *Winding up by Court Order*

**216.** Sections 217 to 228 apply to corporations being <sup>Application of ss. 217-228</sup> wound up by order of the court. *New*.

**217.** A corporation may be wound up by order of the <sup>Winding up by court</sup> court,

- (a) where the shareholders by a majority of the votes cast at a general meeting called for that purpose or by such greater proportion of the votes cast as the articles provide pass a resolution authorizing an application to be made to the court to wind up the corporation;
- (b) where proceedings have been begun to wind up voluntarily and it appears to the court that it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court;



- (c) where it is proved to the satisfaction of the court that the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its business and that it is advisable to wind it up; or
- (d) where in the opinion of the court it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up. R.S.O. 1960, c. 71, s. 256, *amended*.

Who may  
apply

**218.**—(1) A winding-up order may be made upon the application of the corporation or of a shareholder or, where the corporation is being wound up voluntarily, of the liquidator or of a contributory or of a creditor having a claim of \$1,000 or more.

Notice

(2) Except where the application is made by the corporation, four days notice of the application shall be given to the corporation before the making of the application. R.S.O. 1960, c. 71, s. 257, *amended*.

Power  
of court

**219.** The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as is deemed just, and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise such powers of the court as are necessary for the reference. R.S.O. 1960, c. 71, s. 258, *amended*.

Appoint-  
ment of  
liquidator

**220.**—(1) The court in making the winding-up order may appoint one or more persons as liquidator of the estate and effects of the corporation for the purpose of winding up its affairs and distributing its property.

Remunera-  
tion

(2) The court may at any time fix the remuneration of the liquidator.

Vacancy

(3) If a liquidator appointed by the court dies or resigns or the office becomes vacant for any reason, the court may by order fill the vacancy. R.S.O. 1960, c. 71, s. 259 (1-3).

Notice of  
appoint-  
ment

(4) A liquidator appointed by the court under this section shall forthwith give to the Minister notice in writing of his appointment and shall, within twenty days of his appointment, publish the notice in *The Ontario Gazette*. *New*.

Removal of  
liquidator

**221.** The court may by order remove for cause a liquidator appointed by it, and in such case shall appoint another liquidator in his stead. R.S.O. 1960, c. 71, s. 259 (4).



**222.** The costs, charges and expenses of a winding up by order of the court shall be taxed by a taxing officer of the Supreme Court at Toronto. R.S.O. 1960, c. 71, s. 260. Costs and expenses

**223.** Where a winding-up order is made by the court without prior voluntary winding-up proceedings, the winding up shall be deemed to commence at the time of the service of notice of the application, and, where the application is made by the corporation, at the time the application is made. R.S.O. 1960, c. 71, s. 261. Commencement of winding up

**224.** Where a winding-up order has been made by the court, proceedings for the winding up of the corporation shall be taken in the same manner and with the like consequences as provided for a voluntary winding up, except that the list of contributories shall be settled by the court unless it has been settled by the liquidator before the winding-up order, in which case the list is subject to review by the court, and except that all proceedings in the winding up are subject to the order and direction of the court. R.S.O. 1960, c. 71, s. 262. Proceedings in winding up after order

**225.**—(1) Where a winding-up order has been made by the court, the court may direct meetings of the shareholders of the corporation to be called, held and conducted in such manner as the court thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of it to the court. Meetings of shareholders of corporation may be ordered

(2) Where a winding-up order has been made by the court, the court may require any contributory for the time being settled on the list of contributories, or any director, officer, employee, trustee, receiver, banker or agent of the corporation to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any sum or balance, documents, records, estate or effects that are in his hands and to which the corporation is *prima facie* entitled. Order for delivery by contributories and others of property, etc.

(3) Where a winding-up order has been made by the court, the court may make an order for the inspection of the documents and records of the corporation by its creditors and contributories, and any documents and records in the possession of the corporation may be inspected in conformity with the order. R.S.O. 1960, c. 71, s. 263, *amended*. Inspection of documents and records

**226.** After the commencement of a winding up by order of the court, Proceedings against corporation after court winding up

- (a) no action or other proceeding shall be proceeded with or commenced against the corporation; and

- (b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court imposes. R.S.O. 1960, c. 71, s. 264.

Provision  
for dis-  
charge of  
liquidator  
and distri-  
bution by  
the court

**227.**—(1) Where the realization and distribution of the property of a corporation being wound up under an order of the court has proceeded so far that in the opinion of the court it is expedient that the liquidator should be discharged and that the property of the corporation remaining in his hands can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to such officer or person as the court directs, of such property, and it shall be realized and distributed by or under the direction of the court among the persons entitled thereto in the same way as nearly as may be as if the distribution were being made by the liquidator.

Disposal of  
documents  
and  
records

(2) In such case, the court may make an order directing how the documents and records of the corporation and of the liquidator are to be disposed of, and may order that they be deposited in court or otherwise dealt with as the court thinks fit. R.S.O. 1960, c. 71, s. 283, *amended*.

Order for  
dissolution

**228.**—(1) The court at any time after the affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order.

Copy of  
dissolution  
order to  
be filed

(2) The person on whose application the order was made shall within ten days after it was made file with the Minister a certified copy of the order. R.S.O. 1960, c. 71, s. 280 (1, 2), *amended*.

### *Winding Up Generally*

Application  
of ss. 230-  
246

**229.** Sections 230 to 246 apply to corporations being wound up voluntarily or by order of the court. R.S.O. 1960, c. 71, s. 265.

Where no  
liquidator

**230.** Where there is no liquidator,

- (a) the court may by order on the application of a shareholder of the corporation appoint one or more persons as liquidator; and

- (b) the estate and effects of the corporation shall be under the control of the court until the appointment of a liquidator. R.S.O. 1960, c. 71, s. 266, *amended*.

**231.**—(1) Upon a winding up,

Consequences of winding up

- (a) the liquidator shall apply the property of the corporation in satisfaction of all its debts, obligations and liabilities and, subject thereto, shall distribute the property rateably among the shareholders according to their rights and interests in the corporation;
- (b) in distributing the property of the corporation, debts to employees of the corporation for services performed for it due at the commencement of the winding up or within one month before, not exceeding three months wages and for vacation pay accrued for not more than twelve months under *The Employment Standards Act, 1968* and the regulations thereunder or under a collective agreement made by the corporation, shall be paid in priority to the claims of the ordinary creditors, and such persons are entitled to rank as ordinary creditors for the residue of their claims; 1968, c. 35
- (c) all the powers of the directors cease upon the appointment of a liquidator, except in so far as the liquidator may sanction the continuance of such powers.

(2) Section 52 of *The Trustee Act* applies *mutatis mutandis* to liquidators. R.S.O. 1960, c. 71, s. 267, *amended*.

Distribution of property  
R.S.O. 1960  
c. 408

**232.** The costs, charges and expenses of a winding up, including the remuneration of the liquidator, are payable out of the property of the corporation in priority to all other claims. R.S.O. 1960, c. 71, s. 268.

Payment of costs and expenses

**233.**—(1) A liquidator may,

Powers of liquidators

- (a) bring or defend any action, suit or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the corporation;
- (b) carry on the business of the corporation so far as may be required as beneficial for the winding up of the corporation;
- (c) sell the real and personal property, effects and things in action of the corporation by public auction or private sale;

- (d) do all acts and execute, in the name and on behalf of the corporation, all documents, and for that purpose use the seal of the corporation;
- (e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation;
- (f) raise upon the security of the property of the corporation any requisite money;
- (g) take out in his official name letters of administration of the estate of any deceased contributory and do in his official name any other act that is necessary for obtaining payment of any money due from a contributory or from his estate and which act cannot be done conveniently in the name of the corporation; and
- (h) do and execute all such other things as are necessary for winding up the affairs of the corporation and distributing its property.

Bills of exchange, etc., to be deemed drawn in the course of business

(2) The drawing, accepting, making or endorsing of a bill of exchange or promissory note by the liquidator on behalf of a corporation has the same effect with respect to the liability of the corporation as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of the corporation in the course of carrying on its business.

Where moneys deemed to be due to liquidator

(3) Where the liquidator takes out letters of administration or otherwise uses his official name for obtaining payment of any money due from a contributory, such money shall be deemed, for the purpose of enabling him to take out such letters or recover such money, to be due to the liquidator himself. R.S.O. 1960, c. 71, s. 269, *amended*.

Acts by more than one liquidator

**234.** Where more than one person is appointed as liquidator, any power conferred by sections 202 to 246 on a liquidator may be exercised by such one or more of such persons as may be determined by the resolution or order appointing them or, in default of such determination, by any number of them not fewer than two. *New*.

Nature of liability of contributory

**235.** The liability of a contributory creates a debt accruing due from him at the time his liability commenced, but payable at the time or respective times when calls are made for enforcing such liability. R.S.O. 1960, c. 71, s. 270.



**236.** If a contributory dies before or after he had been placed on the list of contributories, his personal representative is liable in due course of administration to contribute to the property of the corporation in discharge of the liability of the deceased contributory and shall be a contributory accordingly. R.S.O. 1960, c. 71, s. 271, *amended*. Who liable in case of his death

**237.**—(1) The liquidator shall deposit all moneys that he has belonging to the corporation and amounting to \$100 or more in any chartered bank of Canada or in the Province of Ontario Savings Office or in any trust company or loan corporation that is registered under *The Loan and Trust Corporations Act*. Deposit of moneys  
R.S.O. 1960, c. 222

(2) If inspectors have been appointed, the depository under subsection 1 shall be one approved by them. Approval of bank by inspectors

(3) Such deposit shall not be made in the name of the liquidator individually, but a separate deposit account shall be kept of the money belonging to the corporation in his name as liquidator of the corporation and in the name of the inspectors, if any, and such money shall be withdrawn only by order for payment signed by the liquidator and one of the inspectors, if any. Separate deposit account to be kept; withdrawal from account

(4) At every meeting of the shareholders of the corporation the liquidator shall produce a pass-book or statement of account showing the amount of the deposits, the dates at which they were made, the amounts withdrawn and the dates of withdrawal, and mention of such production shall be made in the minutes of the meeting, and the absence of such mention is admissible in evidence as *prima facie* proof that the pass-book or statement of account was not produced at the meeting. Liquidators to produce bank pass-book

(5) The liquidator shall also produce the pass-book or statement of account whenever so ordered by the court upon the application of the inspectors, if any, or of a shareholder of the corporation. R.S.O. 1960, c. 71, s. 272, *amended*. Idem

**238.** For the purpose of proving claims, sections 25, 26 and 27 of *The Assignments and Preferences Act* apply *mutatis mutandis*, except that, where the word "judge" is used therein, the word "court" as used in this Act shall be substituted. R.S.O. 1960, c. 71, s. 273. Proving claim  
R.S.O. 1960, c. 25

**239.** Upon the application of the liquidator or of the inspectors, if any, or of any creditors, the court, after hearing such parties as it directs to be notified or after such steps as the court prescribes have been taken, may by order give its direction in any matter arising in the winding up. R.S.O. 1960, c. 71, s. 274. Application for direction

Examination  
of persons  
as to  
estate

**240.**—(1) The court may at any time after the commencement of the winding up summon to appear before the court or liquidator any director, officer or employee of the corporation or any other person known or suspected to have in his possession any of the estate or effects of the corporation, or alleged to be indebted to it, or any person whom the court thinks capable of giving information concerning its trade, dealings, estate or effects.

Damages  
against  
delinquent  
directors,  
etc.

(2) Where in the course of the winding up it appears that a person who has taken part in the formation or promotion of the corporation or that a past or present director, officer, employee, liquidator or receiver of the corporation has misapplied or retained in his own hands, or become liable or accountable for, property of the corporation, or has committed any misfeasance or breach of trust in relation to it, the court may, on the application of the liquidator or of any creditor, shareholder or contributory, examine into the conduct of that person and order him to restore the property so misapplied or retained, or for which he has become liable or accountable, or to contribute such sum to the property of the corporation by way of compensation in respect of such misapplication, retention, misfeasance or breach of trust, or both, as the court thinks just. R.S.O. 1960, c. 71, s. 275, *amended*.

Proceedings  
by share-  
holders

**241.**—(1) Where a shareholder of the corporation desires to cause any proceeding to be taken that, in his opinion, would be for the benefit of the corporation, and the liquidator, under the authority of the shareholders or of the inspectors, if any, refuses or neglects to take such proceeding after being required so to do, the shareholder may obtain an order of the court authorizing him to take such proceeding in the name of the liquidator or corporation, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator or corporation as the court prescribes.

Benefits,  
when for  
shareholders

(2) Any benefit derived from a proceeding under subsection 1 belongs exclusively to the shareholder causing the institution of the proceeding for his benefit and that of any other shareholder who has joined him in causing the institution of the proceeding.

when for  
corporation

(3) If before the order is granted the liquidator signifies to the court his readiness to institute the proceeding for the benefit of the corporation, the court shall make an order prescribing the time within which he is to do so, and in that case the advantage derived from the proceeding, if instituted within such time, belongs to the corporation. R.S.O. 1960, c. 71, s. 276, *amended*.

**242.** The rights conferred by this Act are in addition to any other right to institute proceedings against any contributory, or against any debtor of the corporation, for the recovery of any sum due from such contributory or debtor or his estate. R.S.O. 1960, c. 71, s. 277, *amended*. Rights conferred by Act to be in addition to other powers

**243.** At any time during a winding up, the court, upon the application of a shareholder, creditor or contributory and upon proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed, may make an order staying the proceedings altogether or for a limited time on such terms and subject to such conditions as the court thinks fit. R.S.O. 1960, c. 71, s. 278. Stay of winding-up proceedings

**244.**—(1) Where the liquidator is unable to pay all the debts of the corporation because a creditor is unknown or his whereabouts is unknown, the liquidator may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and thereupon subsections 5 and 6 of section 248 apply thereto. Where creditor unknown

(2) A payment under subsection 1 shall be deemed to be in satisfaction of the debt for the purposes of winding up. R.S.O. 1960, c. 71, s. 281 (3, 4), *amended*. Idem

**245.**—(1) Where the liquidator is unable to distribute rateably the property of the corporation among the shareholders because a shareholder is unknown or his whereabouts is unknown, the share of the property of the corporation of such shareholder may, by agreement with the Public Trustee, be delivered or conveyed by the liquidator to the Public Trustee to be held in trust for the shareholder, and thereupon subsections 5 and 6 of section 248 apply thereto. Where shareholder unknown

(2) A delivery or conveyance under subsection 1 shall be deemed to be a distribution to that shareholder of his rateable share for the purposes of the winding up. R.S.O. 1960, c. 71, s. 281 (1, 2), *amended*. Idem

**246.**—(1) Where a corporation has been wound up under sections 202 to 245 and is about to be dissolved, its documents and records and those of the liquidator may be disposed of as it by resolution directs in case of voluntary winding up, or as the court directs in case of winding up under an order. Disposal of records, etc., after winding up

(2) After the expiration of five years from the date of the dissolution of the corporation, no responsibility rests on it or the liquidator, or anyone to whom the custody of the documents and records has been committed, by reason that the When responsibility as to custody of records, etc., to cease



same or any of them are not forthcoming to any person claiming to be interested therein. R.S.O. 1960, c. 71, s. 282, *amended*.

### *Other Dissolution*

Voluntary  
dissolution

**247.** A corporation may be dissolved upon the authorization of,

- (a) a majority of the votes cast at a general meeting of the shareholders of the corporation duly called for the purpose or by such other proportion of the votes cast as the articles provide;
- (b) the consent in writing of all the shareholders entitled to vote at such meeting; or
- (c) all its incorporators or their personal representatives at any time within two years after the date of issuance of its certificate of incorporation where the corporation has not commenced business and has not issued any shares. R.S.O. 1960, c. 71, s. 327 (1) (a), *amended*.

Articles of  
dissolution  
where  
corporation  
active

**248.—**(1) For the purpose of bringing the dissolution authorized under clause *a* or *b* of section 247 into effect, the corporation shall deliver to the Minister articles of dissolution in duplicate, executed under the seal of the corporation and signed by two officers or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the articles of dissolution, setting out,

- (a) the name of the corporation;
- (b) that its dissolution has been duly authorized under clause *a* or *b* of section 247;
- (c) that it has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection 3 or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;
- (d) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute among its shareholders or that it has distributed its remaining property rateably among its shareholders according to their rights and interests in the corporation or in accordance with subsection 4 where applicable;



(e) that there are no proceedings pending in any court against it; and

(f) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office. R.S.O. 1960, c. 71, s. 327 (1), *part, amended*.

(2) For the purpose of bringing a dissolution authorized under clause *c* of section 247 into effect, the corporation shall deliver to the Minister articles of dissolution in duplicate, signed by all its incorporators or their personal representatives and verified by affidavit of one of them setting out,

Articles of  
dissolution  
where  
corporation  
never  
active

(a) the name of the corporation;

(b) the date of the issuance of its certificate of incorporation;

(c) that the corporation has not commenced business;

(d) that none of its shares has been issued;

(e) that dissolution has been duly authorized under clause *c* of section 247;

(f) that it has no debts, obligations or liabilities;

(g) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute or that it has distributed its remaining property to the persons entitled thereto;

(h) that there are no proceedings pending in any court against it; and

(i) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office. *New*.

(3) Where a corporation authorizes its dissolution and a creditor is unknown or his whereabouts is unknown, the corporation may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and such payment shall be deemed to be due provision for the debt for the purposes of clause *c* of subsection 1.

Where  
creditor  
unknown

Where  
shareholder  
unknown

(4) Where a corporation authorizes its dissolution and a shareholder is unknown or his whereabouts is unknown, it may, by agreement with the Public Trustee, deliver or convey his share of the property to the Public Trustee to be held in trust for him, and such delivery or conveyance shall be deemed to be a distribution to that shareholder of his rateable share for the purposes of the dissolution.

Power to  
convert

(5) If the share of the property so delivered or conveyed to the Public Trustee under subsection 4 is in a form other than cash, the Public Trustee may at any time, and within ten years after such delivery or conveyance shall, convert it into cash.

Payment  
to person  
entitled

(6) If the amount paid under subsection 3 or the share of the property delivered or conveyed under subsection 4 or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled thereto within ten years after it was so delivered, conveyed or paid, it shall be delivered, conveyed or paid to him, but, if not so claimed, it vests in the Public Trustee for the use of Ontario, and, if the person beneficially entitled thereto at any time thereafter establishes his right thereto to the satisfaction of the Lieutenant Governor in Council, an amount equal to the amount so vested in the Public Trustee shall be paid to him. R.S.O. 1960, c. 71, s. 327 (3-6), *amended*.

Certificate  
of  
dissolution

**249.**—(1) If the articles of dissolution conform to law, the Minister shall, when all prescribed fees have been paid and all taxes payable by the corporation to the Treasurer of Ontario have been paid,

(a) endorse on each duplicate of the articles of dissolution the word "Filed" and the day, month and year of the filing thereof;

(b) file one of the duplicates in his office; and

(c) issue to the corporation or its agent a certificate of dissolution to which he shall affix the other duplicate.

Effect of  
certificate

(2) The dissolution becomes effective and the corporation is dissolved upon the date set forth in the certificate of dissolution. *New*.

Cancellation  
of certificate  
etc., by  
Minister

**250.** Where sufficient cause is shown to the Minister, he may, after he has given the corporation an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any certificate issued by him under this Act, and,

- (a) in the case of the cancellation of a certificate of incorporation, the corporation is dissolved on the date fixed in the order;
- (b) in the case of the cancellation of any other certificate, the matter that became effective upon the issuance of the certificate ceases to be in effect from the date fixed in the order. R.S.O. 1960, c. 71, s. 326 (1), *amended*.

**251.**—(1) Where a corporation is in default in filing an annual return under *The Corporations Information Act*, or a predecessor thereof, the Minister shall send notice of the default to the corporation by mail within one year after the default. Notice of default in filing returns  
R.S.O. 1960, c. 72

(2) Where a corporation is in default in filing an annual return for a period of two years, the Minister may give notice, by registered mail to the corporation or by publication once in *The Ontario Gazette*, that an order dissolving the corporation will be issued unless the corporation files the annual return within one year after the giving of the notice. Notice of default in filing returns

(3) Upon default in compliance with the notice given under subsection 2, the Minister may by order cancel the certificate of incorporation and, subject to subsection 4, the corporation is dissolved on the date fixed in the order. Dissolution for default

(4) Where a corporation is dissolved under subsection 3, the Minister, on the application of any interested person immediately before the dissolution, made within two years after the date of dissolution, may in his discretion by order, on such terms and conditions as he sees fit to impose, revive the corporation, and thereupon the corporation, subject to the terms and conditions of the order and to any rights acquired by any person after its dissolution, is restored to its legal position, including all its property, rights, privileges and franchises, and is subject to all its liabilities, contracts, disabilities and debts, as at the date of its dissolution, in the same manner and to the same extent as if it had not been dissolved. R.S.O. 1960, c. 71, s. 326 (2,3); 1964, c. 10, s. 8, *amended*. Revival

**252.**—(1) Notwithstanding the dissolution of a corporation under section 249, 250 or 251 or by the expiration of the period of its duration, Suits after dissolution

- (a) any action, suit or other proceeding commenced by or against the corporation before its dissolution may be proceeded with as if the corporation had not been dissolved;

(b) any action, suit or other proceeding may be brought against the corporation within two years after its dissolution as if the corporation had not been dissolved; and

(c) any property that would have been available to satisfy any judgment, order or other decision if the corporation had not been dissolved remains available for such purpose. 1962-63, c. 24, s. 12, *amended*.

Service  
after  
dissolution

(2) For the purposes of this section, the service of any process on a corporation after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Department as being a director or officer of the corporation before the dissolution. *New*.

Liability  
of share-  
holders to  
creditors

**253.**—(1) Notwithstanding the dissolution of a corporation, each of the shareholders among whom its property has been distributed remains liable to its creditors to the extent of the amount received by him upon the distribution, and an action in a court of competent jurisdiction to enforce such liability may be brought against him within two years from the date of the dissolution and not thereafter.

Action  
against  
one share-  
holder as  
representing  
class

(2) Where there are numerous shareholders, the court referred to in subsection 1 may permit an action to be brought against one or more shareholders as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such shareholders as are found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined. R.S.O. 1960, c. 71, s. 329, *amended*.

Forfeiture  
of un-  
disposed  
property

**254.** Subject to section 252, any real or personal property of a corporation that has not been disposed of at the date of its dissolution is forfeit to the Crown. R.S.O. 1960, c. 71, s. 330, *amended*.

#### GENERAL

Notice to  
directors  
and  
shareholders

**255.**—(1) Subject to the articles or by-laws of a corporation,

(a) a notice or other document required to be given or sent by a corporation to a shareholder or director may be delivered personally or sent by prepaid mail addressed to the shareholder or director at his latest address as shown on the records of the corporation; and



- (b) a notice or other document sent by mail by a corporation to a shareholder or director shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. R.S.O. 1960, c. 71, s. 332, *amended*.

(2) Except where otherwise provided in this Act, a notice or document required to be given or sent to a corporation may be sent to the corporation by prepaid mail at its head office as shown on the records of the Department and shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. Notice to corporation

(3) Where a notice is required by this Act to be given, the giving of the notice may be waived or the time for the notice may be waived or abridged with the consent in writing of every person entitled thereto, whether before or after the time prescribed. *New*. Waiver of notice and abridgement of times

**256.**—(1) Every person who makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omission of which makes the statement false or misleading is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1960, c. 71, s. 339 (1), *amended*. Offence, false statements

(2) No person is guilty of an offence under subsection 1 if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading. *New*. Defence

**257.**—(1) Every person who fails to file with the Minister any document required by this Act to be filed with him is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or, if such person is a body corporate, to a fine of not more than \$20,000. Offence, failure to file

(2) Where a body corporate is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000. *New*. Idem

**258.** No proceeding under section 256 or 257 shall be commenced except with the consent or under the direction of the Minister. *New*. Consent

Offence,  
general

**259.**—(1) Except where otherwise provided, every person who commits an act contrary to or fails or neglects to comply with any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or, if such person is a body corporate, to a fine of not more than \$10,000.

Idem

(2) Where a body corporate is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in the offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000. R.S.O. 1960, c. 71, s. 340, *amended*.

Limitation

**260.**—(1) No proceeding under section 256 or 257 or under section 259 for a contravention of section 161 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Minister as certified by him. R.S.O. 1960, c. 71, s. 339 (2), *amended*.

Idem

(2) No proceedings under section 259 for a contravention of section 148 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(3) Subject to subsections 1 and 2, no proceeding for an offence under this Act or the regulations shall be commenced more than one year after the time when the subject-matter of the offence arose. *New*.

Orders for  
compliance

**261.**—(1) Where a corporation or a director, officer or employee of a corporation does not comply with any provision of this Act, the articles or the by-laws of the corporation, a shareholder or a creditor of the corporation, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, may apply to the court for an order directing the corporation, director, officer or employee, as the case may be, to comply with such provision, and upon such an application the court may make such order or such other order as the court thinks fit. R.S.O. 1960, c. 71, s. 341, *amended*.

Idem

(2) Where it appears to the Commission that any person or corporation to which section 117, subsection 1 of section 118 or section 148 applies has failed to comply with or is contravening any such provision, notwithstanding the imposition of any penalty in respect of such non-compliance or contravention, the Commission may apply to the court for an order directing such person or corporation to comply with such provision or for an order restraining such person or corporation from

contravening such provision and upon such application the court may make such order or such other order as the court thinks fit. 1968-69, c. 17, s. 10, *amended*.

**262.** The Minister may delegate in writing any of his duties or powers under this Act to any public servant in the Department. R.S.O. 1960, c. 71, s. 5, *part, amended*. Powers of Minister

**263.**—(1) The Minister may require any fact relevant to the performance of his duties under this Act or the regulations to be verified by affidavit or otherwise. Proof by affidavit

(2) For the purpose of holding a hearing under this Act, the Minister may administer oaths to witnesses and require them to give evidence under oath. R.S.O. 1960, c. 71, s. 7, *amended*. Oaths at hearings

**264.** The Minister shall cause notice to be published forthwith in *The Ontario Gazette*, Publication of notices in *The Ontario Gazette*

(a) of the issue of every certificate under section 5, 8, 31, 191, 195, 197, 198 or 249;

(b) of the issue of every order under section 161, 250 or 251;

(c) of the filing of a certified copy of an order under subsection 6 of section 215 or subsection 2 of section 228; and

(d) of the filing of a notice by a liquidator under subsection 2 of section 215 or by a corporation under subsection 4 of section 203. R.S.O. 1960, c. 71, s. 10, *amended*.

**265.**—(1) Upon payment of the prescribed fee, any person is entitled to examine any document filed with or issued by the Minister under this Act, and to make extracts therefrom. Searches

(2) Upon payment of the prescribed fee, the Minister shall furnish any person with a certificate as to whether or not a document has been filed with or issued by him under this Act or any predecessor thereof or with a certified copy of any such document. *New*. Certifications by Minister

**266.**—(1) Where this Act requires or authorizes the Minister to issue a certificate or certify any fact, the certificate shall be issued under the seal of the Minister and shall be signed by him or by such officer of the Department as is designated by the regulations. *New*. Execution of certificates of Minister



Certificates  
as  
evidence

(2) Any certificate purporting to be under the seal of the Minister and signed by a person authorized by or under subsection 1, or any certified copy, is receivable in evidence in any action, prosecution or other proceeding as *prima facie* proof of the facts so certified without proof of the seal or of the signature or the official position of the person appearing to have signed the certificate. R.S.O. 1960, c. 71, s. 333, *amended*.

Notice of  
refusal  
to file

**267.**—(1) Where the Minister refuses to file any articles or any other document required by this Act to be filed by him before it becomes effective, he shall give written notice to the person who delivered the articles or other document of his refusal, specifying the reasons therefor.

Failure  
to act  
deemed  
refusal

(2) Where, within six months after the delivery to the Minister of articles or other document referred to in subsection 1, the Minister has not filed or refused to file such articles or other document, he shall be deemed for the purposes of section 268 to have refused to file it. *New*.

Appeal  
from  
Minister

**268.**—(1) Any person who feels aggrieved by a decision of the Minister to,

- (a) refuse to file articles or any other document or to issue any certificate required by this Act to be filed or issued;
- (b) issue or refuse to issue a certificate of amendment under subsection 2, 3 or 4 of section 8; or
- (c) issue an order under section 250,

may appeal the decision to the Court of Appeal.

Form of  
appeal

(2) Every appeal shall be by notice of motion sent by registered mail to the Minister within thirty days after the mailing of the notice of the decision, and the practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action, provided that the Rules Committee may vary or amend such practice and procedure or may prescribe the practice and procedure that shall be applicable to appeals taken under this Act.

Certificate  
of  
Minister

(3) The Minister shall certify to the Registrar of the Supreme Court,

- (a) the decision of the Minister, together with a statement of the reasons therefor;



(b) the record of any hearing; and

(c) all written submissions to the Minister or other material that is relevant to the appeal. *New.*

(4) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. *Representation*  
1962-63, c. 24, s. 11, *part, amended.*

(5) Where an appeal is taken under this section, the Court of Appeal may by its order direct the Minister to make such decision or to do such other act as the Minister is authorized and empowered to do under this Act and as the court thinks proper, having regard to the material and submissions before it and to this Act, and the Minister shall make such decision or do such act accordingly. *Order of Court of Appeal*

(6) Notwithstanding an order of the Court of Appeal, the Minister has power to make any further decision upon new material or where there is a material change in the circumstances, and every such decision is subject to this section. *Minister may make further decision*  
*New.*

**269.**—(1) Section 5 of *The Securities Act, 1966* applies, so far as possible, to hearings of the Commission under this Act. *Hearings of Commission 1966, c. 142*

(2) Any person who feels aggrieved by a decision of the Commission under this Act may appeal the decision to the Court of Appeal, and subsections 2 to 6 of section 29 of *The Securities Act, 1966* apply to the appeal. *Appeal from Commission*  
*New.*

**270.** An appeal lies to the Court of Appeal from any order made by the court under this Act. *Appeal from court*  
R.S.O. 1960, c. 71, s. 338.

**271.** The Lieutenant Governor in Council may make regulations respecting any matter that he considers necessary relating to the incorporation, conduct and dissolution of corporations including, without limiting the generality of the foregoing, regulations, *Regulations*

(a) respecting names of corporations or classes thereof, objects of corporations, authorized capital of corporations, the designation, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes of shares of corporations, or any other matter pertaining to articles or the filing thereof;

- (b) requiring the payment of fees for any matter that the Minister is required or authorized to do under this Act, and prescribing the amounts thereof;
- (c) prescribing any matter required by this Act to be prescribed by the regulations;
- (d) designating officers of the Department for the purposes of paragraph 7 of subsection 1 of section 1 and section 266;
- (e) respecting the form and content of the reports of insiders required to be filed under section 148;
- (f) respecting the form and content of information circulars required by section 118. R.S.O. 1960, c. 71, s. 335; 1966, c. 28, ss. 3, 4, *part, amended*.

Continu-  
ance of  
letters  
patent, etc.

**272.**—(1) Any provision in the letters patent, supplementary letters patent or by-laws of a corporation that was valid immediately before this Act comes into force except a by-law that contravenes section 147 continues to be valid and in effect, but any additions or amendments thereto or deletions therefrom shall be made in accordance with this Act.

Continu-  
ance re  
shares not  
fully paid  
R.S.O. 1960,  
c. 71

(2) The provisions of *The Corporations Act* relating to the liability of the holder of shares that are not fully paid and to the enforcement of such liability continue to apply in respect of shares that are not fully paid when this Act comes into force. *New*.

Commence-  
ment

**273.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

**274.** This Act may be cited as *The Business Corporations Act, 1970*.









The Business Corporations Act, 1970

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*1st Reading*

April 29th, 1970

*2nd Reading*

May 5th, 1970

*3rd Reading*

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MR. LAWRENCE (Carleton East)

(*Reprinted as amended by the  
Legal and Municipal Committee*)

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**The Business Corporations Act, 1970**

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MR. LAWRENCE (Carleton East)

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*(Reprinted as amended by the Committee of the Whole House)*

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TORONTO

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## EXPLANATORY NOTE

The purpose of this Bill is to effect a complete revision of those Parts of *The Corporations Act* relating to the incorporation, operation, management and dissolution of ordinary Ontario corporations with share capital, in the light of the recommendation in the Interim Report of the Select Committee on Company Law. The Bill does not deal with special types of corporations, such as corporations without share capital, co-operatives, insurance corporations, loan and trust corporations, credit unions, and extra-provincial corporations, the study of which remains unfinished by the Select Committee.

The principal changes are as follows:

1. Incorporation is as of right by the filing of articles of incorporation and no longer in the discretion of the Minister.
2. Incorporation to practise a profession is prohibited, unless expressly permitted by the statute governing the profession.
3. A corporation need have only one shareholder.
4. The minimum number of directors is reduced from three to one in the case of a corporation that is not offering its securities to the public.
5. The distinction between public and private companies is abolished.
6. The doctrines of *ultra vires* and constructive notice are abolished as regards third parties dealing with a corporation.
7. Provision is made for establishing liability for pre-incorporation contracts.
8. It will no longer be necessary after the first year of a corporation's existence to call and hold a meeting of directors or shareholders to pass a by-law or resolution if such by-law or resolution is consented to in writing by all the directors or shareholders, as the case may be.
9. Mutual fund shares are expressly provided for.
10. A corporation is permitted to purchase its own common shares out of surplus and to resell them, subject to the insider trading provisions.
11. Partly-paid shares can no longer be issued.
12. A code of conduct for trustees under corporate trust indentures is established.
13. Article 8 of the Uniform Commercial Code, which provides for the negotiability of corporate securities, and defines the rights and obligations of issuers, transfer agents, transferors and transferees with respect to the issue, registration and transfer of corporate securities, is adopted.
14. Provision is made for the establishment of a central clearing corporation, whereby transfers of corporate securities can be effected merely by entries on the records of such corporation, eliminating the necessity for physical delivery of the actual certificates.
15. Shareholders are given the right, with leave of the court, to bring representative actions on behalf of a corporation to enforce any right that the corporation has, when the corporation refuses to bring action to enforce such right.



16. Dissenting shareholders can require a corporation to buy them out if the corporation disposes of its undertaking, amalgamates with another corporation or undergoes other fundamental corporate changes.
17. Holders of 10 per cent of the voting shares can requisition a meeting of shareholders to pass specific by-laws, where the directors refuse to pass them.
18. The minimum period of notice of meetings of shareholders is increased from ten to twenty-one days in the case of a corporation that is offering its securities to the public.
19. Meetings of shareholders can be requisitioned by the holders of 10 per cent of the voting shares and also by the court upon the application of any shareholder.
20. A director need no longer be a shareholder, unless the by-laws otherwise provide.
21. A quorum of the directors is given the right to call a meeting of directors at any time.
22. A statutory standard of conduct for directors and officers is prescribed.
23. The liability of directors for an improper declaration of dividends is extended to the cases of an improper purchase or redemption of shares and an improper loan or guarantee to shareholders. In certain circumstances individual shareholders may also be personally liable in such cases.
24. The liability of directors for wages of employees is extended from one to two years.
25. A director can be removed from office at any time by a majority vote of the shareholders.
26. A corporation can no longer indemnify its directors or officers in respect of the cost of legal actions taken against them as a result of their breach of duty.
27. A corporation is permitted, under proper safeguards, to use electronic or other devices to maintain its records.
28. Within two years after the Act comes into force, no person can act as auditor of a corporation if he, his partner, employer or any person related to him (as defined in the Act) owns directly or indirectly any securities of the corporation or of the holding corporation of such corporation.
29. The auditor of a corporation cannot be appointed its receiver or liquidator and cannot be the trustee in bankruptcy of the estate of such corporation.
30. The percentage necessary to remove an auditor during his term of office is reduced to a majority of the votes cast at a meeting of the shareholders, from the present two-thirds vote required.
31. Where an incumbent auditor is to be removed or replaced, he has the right to make representations to the shareholders, at the expense of the corporation, concerning his proposed removal or non-reappointment, prior to the meeting of shareholders at which such action is to be taken.
32. The auditor of a holding corporation has the right to inspect the records and to question the directors, officers and employees of each subsidiary thereof.

33. Any shareholder can require the attendance of an auditor at any shareholders' meeting at the corporation's expense.
34. It will no longer be possible for a corporation that is offering its securities to the public to omit from its annual audited financial statement or from its semi-annual interim financial statement the comparative statement for the corresponding previous period or the statement of source and application of funds.
35. The right of a shareholder of a holding corporation to examine true copies of financial statements of its subsidiaries is extended from the present case where the holding corporation does not consolidate its accounts to include the case where it does.
36. A corporation that is offering its securities to the public must appoint an audit committee of its directors, of whom a majority are not to be officers of the corporation, to which the annual financial statement must be submitted for review and before which the auditor has the right, and can be summoned, to appear.
37. The present right of the holders of 10 per cent of the issued capital of a corporation to apply to the court for the appointment of an inspector to investigate the affairs and management of the corporation is now conferred upon any shareholder. The court may also order the investigation of the affairs and management of any affiliate of the corporation. The powers of the inspector are amplified.
38. Two or more corporations proposing to amalgamate cannot do so if any of them is insolvent.
39. On a voluntary winding up, the court has the power to review the remuneration of the liquidator even where it has been fixed by the shareholders.
40. The period following dissolution of a corporation within which an application for revival can be made is extended from one to two years.
41. Actions and other proceedings can be brought against a corporation within two years after its dissolution to the same extent as if it had not been dissolved.
42. The period following dissolution of a corporation within which the shareholders may be liable to the creditors is extended from one to two years.
43. The penalties are revised.
44. The present right of a shareholder or creditor to apply to the court to require a corporation or any director or officer thereof to comply with the Act is extended to cover an application for an order of compliance with any provision of the articles of incorporation or by-laws of the corporation as well.
45. Applications to the court under the Act are to be heard by a judge of the Supreme Court of Ontario designated for that purpose by the Chief Justice of the High Court.
46. All decisions of the Minister under the Act are appealable as of right to the Court of Appeal.

BILL 61

1970

## The Business Corporations Act, 1970

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** In this Act,

Interpre-  
tation

1. “affiliate” means an affiliated body corporate within the meaning of subsection 4;
2. “articles of incorporation” or “articles” means the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which a corporation is incorporated, and includes any amendments thereto;
3. “associate”, where used to indicate a relationship with any person, means,
  - (i) any body corporate of which such person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the body corporate for the time being outstanding,
  - (ii) any partner of that person acting by or for the partnership of which they are both partners,
  - (iii) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity,
  - (iv) any spouse, son or daughter of that person, or
  - (v) any relative of such person or of his spouse, other than a relative referred to in subparagraph iv, who has the same home as such person.

4. "authorized capital" means the authorized capital as determined under section 24;
5. "body corporate" means any body corporate with or without share capital and whether or not it is a corporation to which this Act applies;
6. "certificate of incorporation" includes letters patent, a special Act or any other instrument by which a corporation is incorporated;
7. "certified copy" means,
  - i. in relation to a document of a corporation, a copy of the document certified to be a true copy under the seal of the corporation and signed by an officer thereof,
  - ii. in relation to a document issued by a court, a copy of the document certified to be a true copy under the seal of the court and signed by the registrar or clerk thereof,
  - iii. in relation to a document in the custody of the Department, a copy of the document certified to be a true copy under the seal of the Minister and signed by the Minister or by such officer of the Department as is designated by the regulations;
8. "Commission" means the Ontario Securities Commission;
9. "corporation" means a body corporate with share capital to which this Act applies;
10. "court" means the Supreme Court of Ontario presided over by one of those judges of the High Court who are designated by the Chief Justice of the High Court for the purpose of hearing applications under this Act;
11. "debt obligation" means a bond, debenture, note or other similar obligation of a body corporate, whether secured or unsecured;
12. "Department" means the Department of the Minister;
13. "equity share" means any share of any class of shares of a body corporate carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing;



14. "financial statement" means a financial statement referred to in section 172;
15. "insider" or "insider of a corporation" means,
  - i. any director or senior officer of a corporation that is offering its securities to the public,
  - ii. any person who beneficially owns, directly or indirectly, equity shares of such a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, but, in computing the percentage of voting rights attached to equity shares owned by an underwriter as defined in *The Securities Act, 1966*,<sup>1966, c. 142</sup> there shall be excluded any equity shares that have been acquired by him as underwriter in the course of distribution to the public of such shares, but such exclusion ceases to have effect on completion or cessation of the distribution to the public by him, or
  - iii. any person who exercises control or direction over the equity shares of such a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding;
16. "interim financial statement" means a financial statement referred to in section 185;
17. "issued capital" means the issued capital as determined under section 32;
18. "Minister" means the Minister of Financial and Commercial Affairs or such other member of the Executive Council to whom the administration of this Act may be assigned.
19. "officer" means the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager, or any other person designated an officer by by-law or by resolution of the directors;
20. "personal representative", where used with reference to holding shares in that capacity, means an executor, administrator, guardian, tutor, trustee, receiver or liquidator or the committee of or curator to a mentally incompetent person;
21. "prescribed" means prescribed by the regulations;

22. "regulations" means the regulations made under this Act;
23. "related person", where used to indicate a relationship with any person, means,
  - (i) any spouse, son or daughter of that person,
  - (ii) any relative of such person or of his spouse, other than a relative referred to in subparagraph i, who has the same home as such person, or
  - (iii) any body corporate of which such person and any of the persons referred to in subparagraph i or ii or the partner or employer of such person, either alone or in combination, beneficially owns, directly or indirectly, equity shares carrying more than 50 per cent of the voting rights attached to all equity shares of the body corporate for the time being outstanding.
24. "security" means any share of any class of shares or any debt obligation of a body corporate;
25. "senior officer" means,
  - i. the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other individual who performs functions for the corporation similar to those normally performed by an individual occupying any such office, and
  - ii. each of the five highest paid employees of a corporation, including any individual referred to in subparagraph i;
26. "special by-law" means a by-law that is not effective until it is,
  - i. passed by the directors of a corporation, and
  - ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the shareholders of the corporation duly called for that purpose, or such greater proportion of the votes cast as the articles provide, or, in lieu of such confirmation, by the consent in writing of all the shareholders entitled to vote at such meeting;

27. "special resolution" means a resolution that is not effective until it is,

- i. passed by the directors of a corporation, and
- ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the shareholders of the corporation duly called for that purpose, or such greater proportion of the votes cast as the articles provide, or, in lieu of such confirmation, by the consent in writing of all the shareholders entitled to vote at such meeting.

28. "warrant" means any document issued by a body corporate entitling the holder to purchase a security of the body corporate on specified terms. R.S.O. 1960, c. 71, s. 1; 1966, c. 28, ss. 1, 3, *part*; 1968-69, c. 16, s. 1 (1), *amended*.

(2) For the purposes of this Act, a body corporate shall be deemed to be a subsidiary of another body corporate if, <sup>Interpretation:</sup> <sub>subsidiary corporation</sub> but only if,

(a) it is controlled by,

- (i) that other, or
- (ii) that other and one or more bodies corporate each of which is controlled by that other, or
- (iii) two or more bodies corporate each of which is controlled by that other; or

(b) it is a subsidiary of a body corporate that is that other's subsidiary.

(3) For the purposes of this Act, a body corporate shall be deemed to be another's holding body corporate if, <sup>Holding corporation</sup> but only if, that other is its subsidiary.

(4) For the purposes of this Act, one body corporate shall be deemed to be affiliated with another body corporate if, <sup>Affiliated corporation</sup> but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. R.S.O. 1960, c. 71, s. 90 (1-3), *amended*.

(5) For the purposes of this Act, a body corporate shall be deemed to be controlled by another person or by two or more bodies corporate if, <sup>Control</sup> but only if,

- (a) shares of the first-mentioned body corporate carrying more than 50 per cent of the votes for the election

of directors are held, other than by way of security only, by or for the benefit of such other person or by or for the benefit of such other bodies corporate; and

- (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned body corporate. R.S.O. 1960, c. 71, s. 90 (4); 1966, c. 28, s. 12, *amended*.

Insider

(6) For the purposes of this Act,

- (a) every director or senior officer of a body corporate that is itself an insider of another body corporate shall be deemed to be an insider of such other body corporate;
- (b) an individual shall be deemed to own beneficially securities beneficially owned by a body corporate controlled by him or by an affiliate of such body corporate;
- (c) a body corporate shall be deemed to own beneficially securities beneficially owned by its affiliates; and
- (d) the acquisition or disposition by an insider of a put, call or other transferable option in respect of a security shall be deemed a change in the beneficial ownership of the security to which such transferable option relates. 1966, c. 28, s. 3, *part, amended*.


Insolvency

(7) For the purposes of this Act, a corporation is insolvent if its liabilities exceed the realizable value of its assets or if the corporation is unable to pay its debts as they become due.

Number of  
shareholders

(8) In determining the number of shareholders of a corporation, for the purposes of this Act, two or more persons holding the same share or shares jointly shall be counted as one shareholder.

Offering  
securities  
to public


 (9) A body corporate shall be deemed to be offering its securities to the public where,

- (a) in respect of any of the securities of which a prospectus or statement of material facts has been filed with and accepted by the Commission under *The Securities Act, 1966*, or any predecessor thereof, so long as any of such securities are outstanding; or

1966, c. 142

- (b) any of the shares of which are listed and posted for trading on any stock exchange in Ontario recognized by the Commission,



except that where, upon the application of a corporation that has fewer than 15 shareholders, the Commission is satisfied, in its discretion, that to do so would not be prejudicial to the public interest, the Commission may order, subject to such terms and conditions as the Commission may impose, that the Corporation shall be deemed to have ceased to be offering its securities to the public. *New.* 

**2.**—(1) This Act, except where it is otherwise expressly <sup>Application</sup> provided, applies,

- (a) to every corporation incorporated by or under a general or special Act of the Parliament of the former Province of Upper Canada;
- (b) to every corporation incorporated by or under a general or special Act of the Parliament of the former Province of Canada that has its head office and carries on business in Ontario and that was incorporated with objects to which the authority of the Legislature extends; and
- (c) to every corporation incorporated by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation incorporated for the construction and working of a railway, an incline railway or a street railway, or to a corporation within the meaning of *The Loan and Trust Corporations Act* except as provided by <sup>R.S.O. 1960, c. 222</sup> that Act. R.S.O. 1960, c. 71, s. 17.

(2) This Act does not apply to a corporation that, <sup>Idem</sup>

- (a) is a company within the meaning of *The Corporations Act* and has objects in whole or in part of a social nature; <sup>R.S.O. 1960, c. 71</sup>
- (b) is a corporation or company within the meaning of Part V of *The Corporations Act*;
- (c) is a corporation that is an insurer within the meaning of subsection 1 of section 143 of *The Corporations Act*;
- (d) is a corporation to which *The Credit Unions Act* <sup>R.S.O. 1960, c. 79</sup> applies. *New.*

#### INCORPORATION

**3.**—(1) A corporation may be incorporated under this <sup>Incorporation</sup> Act for any lawful objects to which the authority of the Legislature extends, except those of a corporation the incorporation of which is provided for in any other Act. R.S.O. 1960, c. 71, s. 3 (1), *amended.*

Idem

(2) Notwithstanding subsection 1, a corporation may be incorporated under this Act with power only to lend and invest money on mortgage of real estate or otherwise, or with power only to accept and execute the office of liquidator, receiver, assignee, trustee in bankruptcy or trustee for the benefit of creditors and to accept the duty of and to act generally in the winding up of corporations, partnerships and estates, other than estates of deceased persons, and shall not by reason thereof be deemed to be a corporation within the meaning of *The Loan and Trust Corporations Act*, but the number of its shareholders, exclusive of persons who are in the employment of the company, shall be limited by its articles to five, and no such corporation shall issue debt obligations except to its shareholders, or borrow money on the security of its property except from its shareholders, or receive money on deposit or offer its securities to the public. R.S.O. 1960, c. 71, s. 3 (2); 1966, c. 28, s. 2, *amended*.

R.S.O. 1960,  
c. 222

Professions

(3) Where the practice of a profession is governed by an Act, a corporation may be incorporated to practise the profession only if such Act expressly permits the practice of such profession by a corporation and subject to the provisions of such Act. *New*.

Articles of  
incorpora-  
tion

4.—(1) One or more persons, being a body corporate or a natural person who is of the age of twenty-one years or more, may incorporate a corporation by signing and delivering to the Minister in duplicate articles of incorporation. *New*.

Contents of  
articles

(2) The articles of incorporation shall set out,

1. The name of the corporation to be incorporated.
2. The objects for which the corporation is to be incorporated.
3. The place in Ontario where the head office of the corporation is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district and the address giving the street and number, if any.
4. The authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share, or, where the shares are to be without par value, the consideration, if any, exceeding which each share may not be issued or the aggregate consideration, if any, exceeding which all the shares of each class may not be issued.

5. Where there are to be special shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to them or each class of them.
6. The restrictions, if any, to be placed on the transfer of its shares or any class thereof.
7. The number of directors of the corporation and the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the corporation.
8. The class and number of shares, if any, to be taken by each incorporator and the amount to be paid therefor.
9. The names in full, and the residence address, giving street and number, if any, of each of the incorporators.
10. Any other matter required by this Act or the regulations to be set out in the articles.

(3) The articles may set out any provision that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the corporation. *R.S.O. 1960, c. 71, s. 18, amended.* <sup>Idem</sup>

(4) Where the articles name as a first director a person who is not an incorporator, the articles shall have attached thereto his written and signed consent to act as a first director. <sup>Consent of first directors</sup>

(5) The signature of each incorporator and of each first director and the fact that each incorporator who is a natural person and each first director is of the age of twenty-one years or more shall be verified by affidavit. *New.* <sup>Affidavits</sup>

**5.—**(1) If the articles conform to law and the approval of any person or body required by statute to approve the incorporation has been given, the Minister shall, when all prescribed fees have been paid, <sup>Certificate of incorporation</sup>

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the incorporators or their agent a certificate of incorporation to which he shall affix the other duplicate. *New.*

(2) A corporation comes into existence upon the date set forth in its certificate of incorporation. *1961-62, c. 21, s. 1, amended.* <sup>Idem</sup>

Idem

(3) A certificate of incorporation is conclusive proof that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act, except in a proceeding under section 250 to cancel the certificate for cause. R.S.O. 1960, c. 71, s. 9, *amended*.

## NAME

Use of  
word  
"Limited"

**6.—**(1) The name of a corporation shall have the word "Limited" or "Incorporated" or its corresponding abbreviation "Ltd." or "Inc." as the last word thereof. R.S.O. 1960, c. 71, s. 20 (1), *amended*.

Use of  
name

(2) Where a corporation or a director, officer or employee thereof uses the name of the corporation, the word "Limited" or "Incorporated" or its corresponding abbreviation "Ltd." or "Inc.", shall appear as the last word thereof.

Exception

(3) Stamping, writing, printing or otherwise marking on goods, wares or merchandise of the corporation or upon packages containing the goods, wares or merchandise shall not be deemed a use of the name within the meaning of subsection 2. R.S.O. 1960, c. 71, s. 21 (1, 2), *amended*.

Use of  
name

**7.** Notwithstanding section 6, a corporation may use its name in such form and in such language as the articles provide and as the Minister approves. 1964, c. 10, s. 1, *amended*.

Corporate  
name

**8.—**(1) The name of a corporation shall not,

(a) be the same as or similar to the name of a known body corporate, association, partnership or individual whether in existence or not if its use would be likely to deceive, except where the body corporate, association, partnership or individual signifies its or his consent in writing to the use of the name in whole or in part, and, if required by the Minister,

(i) in the case of a body corporate, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles or amendment by which the name is acquired, or

(ii) in the case of an association, partnership or individual, undertakes to cease to carry on its or his business or activities, or change its or his name to a dissimilar name, within six months after the filing of the articles or amendment by which the name is acquired;



- (b) suggest or imply a connection with the Crown or the Government of Canada or the government of a municipality or any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government or municipality without the consent in writing of the appropriate authority;
- (c) where the objects applied for are of a political nature, suggest or imply a connection with a political party or a leader of a political party;
- (d) include the word "co-operative" or any abbreviation or derivation thereof;
- (e) contain any word or phrase that indicates or implies that it is incorporated for any object other than one or more of the objects set out in its articles;
- (f) contain any word or phrase or any abbreviation or derivation thereof, the use of which is prohibited or restricted under any other Act unless in the latter case the restrictions are complied with; or
- (g) in the opinion of the Minister, be objectionable on any public grounds.

(2) If a corporation through inadvertence or otherwise has acquired a name contrary to subsection 1, the Minister may, after he has given the corporation an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly. R.S.O. 1960, c. 71, s. 12 (1, 2), *amended*.

Change of  
name if  
objection-  
able

(3) Where an undertaking referred to in clause *a* of subsection 1 is given by a corporation to which this Act applies and the undertaking is not carried out within the time specified, the Minister may, after giving the corporation an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly.

Failure to  
perform  
undertaking

(4) Where an undertaking referred to in clause *a* of subsection 1 is given by a body corporate to which this Act does not apply or by an association, partnership or individual and the undertaking is not carried out within the time specified, the Minister may, after giving the corporation that acquired the name by virtue of such undertaking an opportunity to be heard, issue a certificate of amendment to the

Idem

articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate, the articles are amended accordingly. *New.*

Change not  
to affect  
rights, etc.

**9.** A change in the name of a corporation does not affect its rights or obligations. R.S.O. 1960, c. 71, s. 13.

Unauthor-  
ized use of  
"Limited",  
etc.

**10.**—(1) No person, partnership or association while not incorporated shall trade or carry on a business or undertaking under a name in which "Limited", "Incorporated" or "Corporation" or any abbreviation thereof is used. R.S.O. 1960, c. 71, s. 14, *amended.*

Idem

(2) Where a corporation carries on business or identifies itself to the public in a name or style other than as provided in the articles, such name or style shall not include the word "Limited", "Incorporated" or "Corporation" or any abbreviation thereof. *New.*

Reservation  
of name

**11.**—(1) Any person may, on application in writing and on the payment of the prescribed fee, reserve a corporate name for the use and benefit of the applicant or his nominee for a period of sixty days or such lesser period as he specifies, if the name is at the time not contrary to section 8. R.S.O. 1960, c. 71, s. 15, *amended.*

Idem

(2) During the period for which a name has been reserved, no corporation shall acquire the name or a similar name without the consent in writing of the person for whose use and benefit the name has been reserved. *New.*

Notice  
of name

**12.** An individual, partnership or association may notify the Minister of the name under which his or its business or undertaking is carried on, and thereupon the Minister shall make a notation thereof in his records. R.S.O. 1960, c. 71, s. 16, *amended.*

#### SEAL AND HEAD OFFICE

Corporate  
seal

**13.**—(1) A corporation shall have a seal which shall be adopted and may be changed by resolution of the directors. R.S.O. 1960, c. 71, s. 292, *amended.*

Idem

(2) The name of the corporation shall appear in legible characters on the seal. *New.*

Head  
office

**14.**—(1) Subject to subsection 2, a corporation shall at all times have its head office at the place in Ontario where the articles provide that the head office is to be located.

Change of  
head office

(2) A corporation may by special by-law change the municipality or geographic township in which its head office is located to another place in Ontario. R.S.O. 1960, c. 71, s. 290 (1, 2), *amended.*

(3) Where the location of the head office of a corporation is changed by reason only of the annexation or amalgamation of the place in which the head office is located to or with another municipality, such change does not constitute and has never constituted a change within the meaning of subsection 2. 1964, c. 10, s. 6. Where municipality annexed or amalgamated

(4) The corporation shall, within ten days after a by-law passed under subsection 2 has been confirmed by the shareholders, file a certified copy of the by-law with the Minister. R.S.O. 1960, c. 71, s. 290 (3), *part, amended*. Filing of by-law

(5) A corporation may by resolution of the directors change the location of its head office within a municipality or geographic township and shall, within ten days after the passing of the resolution, file with the Minister notice of the change giving the address including the street and number, if any, of the new location. *New*. Change of street address

(6) Failure to comply with subsection 4 or 5 does not affect the validity of the by-law or resolution. R.S.O. 1960, c. 71, s. 290 (4), *part, amended*. Validity

#### POWERS

##### *General*

**15.—**(1) Every corporation has power,

- (a) to have perpetual succession;
- (b) to contract and sue and be sued in its corporate name; and
- (c) to carry on business in or identify itself to the public by a name or style other than its corporate name. R.S.O. 1960, c. 191, s. 26 (a), *amended*.

Corporate characteristics

(2) A corporation has power as incidental and ancillary to the objects set out in its articles, Incidental powers

1. to carry on any other business capable of being conveniently carried on in connection with its business or likely to enhance the value of or make profitable any of its property or rights;
2. to acquire or undertake the whole or any part of the business, property and liabilities of any person carrying on any business that the corporation is authorized to carry on;
3. to apply for, register, purchase, lease, acquire, hold, use, control, license, sell, assign or dispose of patents, patent rights, copyrights, trade marks, formulae, licences, inventions, processes, distinctive marks and similar rights;

4. to enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or body corporate carrying on or engaged in or about to carry on or engage in any business or transaction that the corporation is authorized to carry on or engage in or any business or transaction capable of being conducted so as to benefit the corporation;
5. to take or otherwise acquire and hold securities in any other body corporate having objects altogether or in part similar to those of the corporation or carrying on any business capable of being conducted so as to benefit the corporation;
6. to lend money to any other body corporate or any firm or person having dealings with the corporation or with whom the corporation proposes to have dealings or to any other body corporate any of whose shares are held by the corporation;
7. to apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege, that any government or authority or any body corporate or other public body may be empowered to grant, and to pay for, aid in and contribute toward carrying it into effect and to assume any liabilities or obligations incidental thereto;
8. to establish and support or aid in the establishment and support of associations, institutions, funds or trusts for the benefit of employees or former employees of the corporation or its predecessors, or the dependants or connections of such employees or former employees, and grant pensions and allowances, and make payments towards insurance or for any object similar to those set forth in this paragraph, and to subscribe or guarantee money for charitable, benevolent, educational or religious objects or for any exhibition or for any public, general or useful objects;
9. to promote any body corporate for the purpose of acquiring or taking over any of the property and liabilities of the body corporate or for any other purpose that may benefit the corporation;
10. to purchase, lease, take in exchange, hire or otherwise acquire any personal property and any rights or



privileges that the corporation considers necessary or convenient for the purposes of its business;

11. to construct, maintain and alter any buildings or works necessary or convenient for its objects;
12. to acquire by purchase, lease or otherwise and hold any land or interest therein necessary for its actual use and occupation or for carrying on its undertaking, and, when no longer necessary therefor, to sell, alienate or convey it;
13. to take, hold and alienate real and personal property that has in good faith been mortgaged to the corporation by way of security for, or conveyed to it in satisfaction of, debts previously contracted in the course of its business, or purchased at judicial sales upon levy for such indebtedness, or otherwise purchased for the purpose of avoiding a loss to the corporation;
14. to construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences that may advance the interests of the corporation, and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
15. to raise and assist in raising money for, and aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person or body corporate and guarantee the performance or fulfilment of any contracts or obligations of any person or body corporate, and in particular guarantee the payment of the principal of and interest on the debt obligations of any such person or body corporate.
16. to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable instruments;
17. where authorized to do so by a special resolution, to sell, lease, exchange or otherwise dispose of the undertaking of the corporation or any part thereof as an entirety or substantially as an entirety for such consideration as the corporation thinks fit;

18. to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with the property of the corporation in the ordinary course of its business;
19. to adopt such means of making known the products of the corporation as may seem expedient, and in particular by advertising, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes and rewards and making donations;
20. to cause the corporation to be registered and recognized in any foreign jurisdiction or any province or territory of Canada, and designate persons therein according to the laws of that foreign jurisdiction or that province or territory of Canada to represent the corporation and to accept service for and on behalf of the corporation of any process or suit;
21. to allot and issue fully-paid shares of the corporation in payment or part payment of any property purchased or otherwise acquired by the corporation or for any past services performed for the corporation;
22. to distribute among the shareholders of the corporation in cash, kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner deemed advisable, any property of the corporation, but not so as to decrease the capital of the corporation unless the distribution is made for the purpose of enabling the corporation to be dissolved or the distribution, apart from this paragraph, would be otherwise lawful;
23. to establish agencies and branches;
24. to take or hold mortgages, hypothecs, liens and charges to secure payment of the purchase price, or of any unpaid balance of the purchase price, of any part of the property of the corporation of whatsoever kind sold by the corporation, or for any money due to the corporation from purchasers and others and to sell or otherwise dispose of any such mortgage, hypothec, lien or charge;
25. to pay all costs and expenses of or incidental to the incorporation and organization of the corporation;
26. to invest and deal with the moneys of the corporation not immediately required for the objects of the corporation in such manner as may be determined;

27. to do any of the things authorized by this subsection and all things authorized by its articles as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;
28. to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the corporation,

except that the incidental and ancillary powers of a corporation incorporated under subsection 2 of section 3 are limited to those set out in paragraphs 7, 8, 11, 12, 16, 17, 18, 20, 22 and 25. R.S.O. 1960, c. 71, ss. 22 (1), 288, *amended*.

(3) Any of the powers set out in subsection 2 may be withheld or limited by the articles. R.S.O. 1960, c. 71, s. 22 (2), *amended*. Limited by articles

(4) Every corporation may exercise its powers beyond the boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights. R.S.O. 1960, c. 71, s. 287, *amended*. Power to act outside Ontario

**16.**—(1) No act of a corporation and no transfer of real or personal property to or by a corporation, otherwise lawful, that is heretofore or hereafter done or made, is invalid by reason of the fact that the corporation was without capacity or power to do such act or make or receive such transfer, but such lack of capacity or power may be asserted, Acting outside powers

- (a) in a proceeding against the corporation by a shareholder under subsection 2;
- (b) in a proceeding by the corporation, whether acting directly or through a receiver, liquidator, trustee or other legal representative or through shareholders in a representative capacity, against a director or officer or former director or officer of the corporation; or
- (c) as cause for the cancellation of the certificate of incorporation of the corporation under section 250.

(2) A shareholder of a corporation may apply to a court of competent jurisdiction for an order to restrain the corporation from doing any act or transferring or receiving the transfer of real or personal property on the ground that the corporation lacks capacity or power for the purpose, and the court may, if it deems it to be just and equitable, grant an order prohibiting the corporation from doing the act or transferring or receiving the transfer of the real or personal property, but, Restraining order

where the act or transfer sought to be restrained or prohibited is being or to be done or made under a contract to which the corporation is a party,

- (a) all the parties to the contract shall be parties to the proceeding;
- (b) the court in granting the order may set aside the contract and allow the corporation or other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the granting of the order and setting aside of the contract, other than anticipated profits from the contract. *New.*

Loans to  
shareholders,  
directors,  
etc.

**17.—**(1) Except as provided in subsection 2, a corporation shall not,

- (a) make loans to any of its shareholders, directors or employees; or
- (b) give, directly or indirectly, by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made by any person of any shares of the corporation.

Exceptions

(2) A corporation may,

- (a) make loans to any of its shareholders, directors or employees in the ordinary course of its business where the making of loans is part of the ordinary business of the corporation;
- (b) make loans to *bona fide* full-time employees of the corporation whether or not they are shareholders or directors, with a view to enabling them to purchase or erect dwelling houses for their own occupation, and may take from such employees mortgages or other security for the repayment of such loans;
- (c) provide, in accordance with a scheme for the time being in force, money by way of loan for the purchase of or subscription for shares of the corporation by trustees, to be held by or for the benefit of *bona fide* employees of the corporation, whether or not they are shareholders or directors; or
- (d) make loans to *bona fide* employees of the corporation, other than directors, whether or not they are shareholders, with a view to enabling them to purchase or subscribe for shares of the corporation to be held by them by way of beneficial ownership.



(3) The power mentioned in clause *b, c or d* of subsection 2 may be exercised only under the authority of a special by-law. <sup>By special by-law only</sup>  
 R.S.O. 1960, c. 71, s. 23 (1, 2), *amended*.

### *Contracts*

**18.**—(1) A contract that if entered into by an individual person would be by law required to be in writing and under seal may be entered into on behalf of a corporation in writing under the seal of the corporation. <sup>Contracts in writing under seal</sup>

(2) A contract that if entered into by an individual person would be by law required to be in writing signed by the parties to be charged therewith may be entered into on behalf of a corporation in writing signed by any person acting under its authority, express or implied. <sup>Contracts in writing not under seal</sup>

(3) A contract that if entered into by an individual person would be by law valid although made by parol only and not reduced into writing may be entered into by parol on behalf of a corporation by any person acting under its authority, express or implied. R.S.O. 1960, c. 71, s. 293, *amended*. <sup>Parol contracts</sup>

**19.** A corporation may, by writing under seal, empower any person, either generally or in respect of any specified matters, to execute, as its attorney and on its behalf in any place within or outside Ontario, documents to which it is a party in any capacity and that are required by law to be under seal, and every document signed by such attorney on behalf of the corporation acting within the scope of his authority, express or implied, and under his seal binds the corporation and has the same effect as if it were under the seal of the corporation. R.S.O. 1960, c. 71, s. 294, *amended*. <sup>Power of attorney</sup>

**20.**—(1) In this section,

<sup>Interpre-  
tation</sup>

- (a) “contractor” means a person who enters into a pre-incorporation contract in the name of or on behalf of a corporation before its incorporation;
- (b) “other party” means a person with whom a contractor enters into a pre-incorporation contract;
- (c) “pre-incorporation contract” means a contract entered into by a contractor in the name of or on behalf of a corporation before its incorporation.

(2) A corporation may adopt a pre-incorporation contract entered into in its name or on its behalf, and thereupon the corporation is entitled to the benefits and is subject to the <sup>Adoption of pre-incorporation contracts</sup>

liabilities that were contracted in its name or on its behalf and the contractor ceases to be entitled to such benefits or to be subject to such liabilities.

Non-  
adoption  
of pre-  
incor-  
poration  
contracts

(3) Where a pre-incorporation contract is not adopted by a corporation, the contractor is entitled to the benefits and subject to the liabilities under the contract and is entitled to recover from the corporation the value of any benefit received by the corporation under the contract.

Application  
to court  
for relief

(4) Whether or not a pre-incorporation contract is adopted by the corporation, the other party may apply to the court which may, notwithstanding subsections 2 and 3, make an order fixing or apportioning liability as between the contractor and the corporation in any manner the court considers just and equitable under the circumstances. R.S.O. 1960, c. 71, s. 286, *amended*.

### *By-laws and Resolutions*

By laws

**21.—**(1) The directors may pass by-laws not contrary to this Act or to the articles to regulate,

- (a) the allotment and issue of shares, the payment thereof, the issue of share certificates, the transfer and the registration of transfers of shares;
- (b) the declaration and payment of dividends;
- (c) the qualification and remuneration of the directors;
- (d) the time for and the manner of election of directors;
- (e) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (f) the time and place and the notice to be given for the holding of meetings of shareholders and of the board of directors, the quorum at meetings of shareholders, the requirements as to proxies, and the procedure in all things at shareholders' meetings and at meetings of the board of directors;
- (g) the conduct in all other particulars of the affairs of the corporation.

(2) Subject to section 22, a by-law passed under subsection 1 and a repeal, amendment or re-enactment thereof is effective from the time of its passing if it is confirmed, with or without variation, at a general meeting of the shareholders duly called for that purpose or at the next annual meeting of the shareholders, whichever is held first. Confirmation

(3) The shareholders may, at the general meeting or the annual meeting mentioned in subsection 2, confirm, reject, amend or otherwise deal with any by-law passed by the directors and submitted to the meeting for confirmation, but no act done or right acquired under any such by-law is prejudicially affected by any such rejection, amendment or other dealing. R.S.O. 1960, c. 71, s. 67 (1, 3), *amended*. Powers re confirmation

(4) Where a by-law or repeal, amendment or re-enactment thereof is not confirmed at a meeting as required by subsection 2, it has effect from the time of its passing until the meeting but not thereafter, and no subsequent by-law, repeal, amendment or re-enactment of the same or similar substance has any effect until it is confirmed at a general meeting of the shareholders duly called for that purpose. R.S.O. 1960, c. 71, s. 67 (2), *amended*. Rejection

**22.**—(1) A by-law relating to the remuneration of a director as director shall fix the remuneration and the period for which it is to be paid. *New*. Remuneration of directors

(2) A by-law passed under subsection 1 is not effective until it is confirmed at a general meeting of the shareholders duly called for that purpose. R.S.O. 1960, c. 71, s. 68. Confirmation

**23.**—(1) Any by-law or resolution consented to at any time during a corporation's existence by the signatures of all the directors is as valid and effective as if passed at a meeting of the directors duly called, constituted and held for that purpose. By-laws and resolutions

(2) Any resolution consented to at any time during a corporation's existence by the signatures of all the shareholders entitled to vote at a meeting of shareholders is as valid and effective as if passed at a meeting of the shareholders duly called, constituted and held for that purpose. Idem

(3) Any by-law or resolution passed by the directors at any time during a corporation's existence may, in lieu of confirmation at a general meeting of shareholders, be confirmed in writing by all the shareholders entitled to vote at such meeting. Alternative method of confirming by-laws

Evidentiary  
value of  
signatures

(4) Where a by-law or resolution purports to have been consented to or confirmed under this section by the signatures of all the directors or shareholders, as the case may be, of the corporation, the signatures to the by-law or resolution are admissible in evidence as *prima facie* proof of the signatures of the directors or shareholders, as the case may be, that they purport to represent and are admissible in evidence as *prima facie* proof that the signatories to the by-law or resolution were all the directors or all the shareholders entitled to vote at meetings of shareholders, as the case may be, at the date that the by-law or resolution purports so to have been consented to or confirmed. R.S.O. 1960, c. 71, s. 311, *amended*.

## SHARES

### *Authorized Capital*

Authorized  
capital

**24.**—(1) The authorized capital of a corporation shall be divided into shares with par value or without par value or both and may consist of shares of more than one class.

Par  
shares

(2) Where all the shares of a corporation are with par value, its authorized capital shall be expressed in Canadian or other currency in its articles, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of shares of each class multiplied by the par value thereof. R.S.O. 1960, c. 71, s. 24 (1, 2), *amended*.

No par  
shares

(3) Where all the shares of a corporation are without par value, its authorized capital shall be expressed in its articles as a specified number of shares.

No par  
and par  
shares

(4) Where part of the shares of a corporation are with par value and part are without par value, its authorized capital shall be expressed in its articles as a specified number of shares of each class of shares having a specified par value and a specified number of shares of each class of shares without par value. R.S.O. 1960, c. 71, s. 24 (3), *amended*.

Considera-  
tion for  
no par  
shares

**25.**—(1) Where all the shares of a corporation are without par value or where part of its shares are with par value and part are without par value, the articles may provide,

(a) that each share without par value shall not be issued for a consideration; or

(b) the shares of each class of shares without par value shall not be issued for an aggregate consideration,



exceeding in amount or value a stated amount in Canadian or other currency, and the articles may provide, in addition, that such share or shares may be issued for such greater amount as the board of directors of the corporation by resolution determines.

(2) A resolution referred to in subsection 1 is not effective until, Resolution increasing aggregate consideration for no par shares

(a) a certified copy thereof has been filed with the Minister;

(b) all prescribed fees have been paid; and

(c) the Minister has so certified. R.S.O. 1960, c. 71, s. 24 (4), *amended*.

**26.**—(1) The common shares of a corporation shall be shares to which there is attached no preference, right, condition, restriction, limitation or prohibition set out in the articles of the corporation, other than a restriction on the allotment, issue or transfer. Common shares

(2) Where a corporation has one class of shares, that class shall be common shares and designated as provided in the articles. *New*. Classes of shares

(3) Where a corporation has more than one class of shares, one class shall be common shares, designated as provided in the articles, and the other shares shall be special shares and may consist of one or more classes of special shares and shall have attached thereto the designations, preferences, rights, conditions, restrictions, limitations or prohibitions set out in the articles. Idem

(4) No class of special shares shall be designated as preference shares or by words of like import, unless that class has attached thereto a preference or right over the common shares. R.S.O. 1960, c. 71, s. 27 (1), *amended*. Preference shares

**27.**—(1) Each class of special shares may have attached to it preferences, rights, conditions, restrictions, limitations or prohibitions, including but not limited to, Special shares

(a) the right to cumulative, non-cumulative or partially cumulative dividends;

(b) a preference over any other class or classes of shares as to the payment of dividends;

- (c) a preference over any other class or classes of shares as to repayment of capital upon the dissolution of the corporation or otherwise;
- (d) the exclusive right to elect part of the board of directors;
- (e) the right to convert the shares of that class into shares of another class or classes of shares;
- (f) the right of the corporation at its option to redeem all or part of the shares of that class;
- (g) the purchase for cancellation by the corporation of all or part of the shares of that class by agreement with the holders thereof at the lowest price at which, in the opinion of the directors, such shares are obtainable, but not exceeding an amount stated in or determined by the articles;
- (h) conditions, restrictions, limitations or prohibitions on the right to vote at meetings of shareholders. R.S.O. 1960, c. 71, s. 27 (1, 2), *amended*.

Valuation  
of shares

(2) Any provision in the articles under clause *c* or *f* of sub-section 1 shall set out the method by which the amount to be paid in respect of each share of the class is to be determined.  
*New.*

Equality  
of shares  
of a class

**28.** Except as provided in section 29, each share of a class shall be the same in all respects as every other share of that class. R.S.O. 1960, c. 71, s. 25.

Special  
shares in  
series

**29.**—(1) The articles of a corporation may authorize the issue from time to time in one or more series of the special shares of a class and may authorize the directors to fix from time to time before such issue the designation, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to the shares of each series of the class.

Voting  
rights

(2) The shares of all series of the same class of special shares shall carry the same voting rights or the same restrictions, conditions, limitations or prohibitions on the right to vote.

Proportionate  
abatements

(3) Where any dividends or amounts payable on a repayment of capital are not paid in full, the shares of all series of the same class of special shares shall participate rateably in respect of such dividends, including accumulations, if any,

in accordance with the sums that would be payable on such shares if all such dividends were declared and paid in full, and on any repayment of capital in accordance with the sums that would be payable on such repayment of capital if all sums so payable were paid in full. R.S.O. 1960, c. 71, s. 28 (1-3), *amended*.

**30.**—(1) The articles may set forth the designation, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the first series to be issued in which case the special shares of the first series may be issued in accordance with the articles. Provision for first series in articles

(2) A series, other than one to which subsection 1 applies, shall not be issued until, Conditions to issue of series

- (a) the directors have by resolution fixed the designation, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the special shares of the series; and
- (b) the statement referred to in section 31 has been filed with the Minister and the certificate of the Minister has been issued under section 31. R.S.O. 1960, c. 71, s. 28 (4, 5), *amended*.

**31.**—(1) For the purpose of bringing a resolution passed by the directors under subsection 2 of section 30 into effect the corporation shall deliver to the Minister, within six months after the resolution has been passed, a statement in duplicate executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation, and verified by affidavit of one of the officers or directors signing the statement, setting out, Filing of statement

- (a) the name of the corporation;
- (b) a certified copy of the resolution;
- (c) that the resolution was duly passed by the directors;
- (d) the date of the passing of the resolution; and
- (e) that the conditions, if any, contained in the articles or in any prior resolution precedent to the creation and issue of the shares of the series have been complied with.

(2) If the statement conforms to law, the Minister shall, when all prescribed fees have been paid, Issuance of certificate

- (a) endorse on each duplicate of the statement the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of the filing to which he shall affix the other duplicate.

Effect of  
certificate

(3) Upon the date set forth in the certificate of filing the resolution becomes effective and constitutes an amendment to the articles. *New.*

### *Issued Capital*

Issued  
capital,  
par value  
shares:

**32.—**(1) Where all the shares of a corporation are with par value, its issued capital shall be expressed in Canadian or other currency, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of issued shares of each class multiplied by the par value thereof less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act.

no par  
value  
shares, etc.

(2) Where the shares of a corporation are without par value or where part of its shares are with par value and part are without par value, its issued capital shall be expressed in Canadian or other currency, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of issued shares of each class with par value multiplied by the par value thereof, together with the amount of the consideration for which the shares without par value from time to time outstanding were issued and together with such amounts as from time to time by by-law of the corporation may be transferred thereto and less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act. R.S.O. 1960, c. 71, s. 30 (1, 2), *amended*.

Cancellation  
of par  
share:

**33.—**(1) Where an issued share of a class with par value is cancelled, the issued capital is decreased by an amount equal to the par value of the shares of that class. *New.*

of no par  
share

(2) Where an issued share of a class without par value is cancelled, the issued capital is decreased by an amount equal to the amount obtained by dividing,

- (a) that part of the issued capital attributable to that class of shares in accordance with subsection 2 of section 32,

by



- (b) the number of issued shares of that class. R.S.O. 1960, c. 71, s. 35, *amended*.

(3) Where a fraction of an issued share of a class is cancelled, the issued capital is decreased by an amount that bears the same proportion to the amount determined under subsection 1 or 2, as the case may be, that the fraction bears to a whole share of that class. *New.* <sup>of fraction of share</sup>

*Redemption, Purchase, Conversion and Surrender*

**34.**—(1) Where the shares of a class of special shares are made redeemable by the articles and part only of the special shares are to be redeemed, the shares to be redeemed shall be selected, <sup>Redemption of special shares</sup>

- (a) by lot in such manner as the board of directors determines;
- (b) as nearly as may be in proportion to the number of special shares of the class registered in the name of each shareholder; or
- (c) in such other manner as the board of directors determines with the consent of the holders of special shares of the class obtained in the manner set out in subsection 2,

but the articles may confine the manner of selection to that set out in clause *a* or in clause *b*.

(2) Where shares of a class of special shares are selected in the manner referred to in clause *c* of subsection 1, the selection shall be consented to in writing by, <sup>Idem</sup>

- (a) all the holders of the special shares of the class; or
- (b) at least 95 per cent of the holders of the special shares of the class holding at least 95 per cent of the issued shares of that class if, after twenty-one days notice has been given by sending notice to each of the holders of shares of that class addressed to him at his latest address as shown on the records of the corporation, none of the holders of shares of that class dissents in writing to the corporation. R.S.O. 1960, c. 71, s. 27 (7, 8), *amended*.

(3) Where a holder of redeemable special shares of a corporation that is not offering its securities to the public dies or leaves its employment, notwithstanding subsection 1, it may within one year of such event redeem all or any of the special shares held by him. R.S.O. 1960, c. 71, s. 27 (9), *amended*. <sup>Idem</sup>

Purchase of  
special  
shares for  
cancellation

**35.**—(1) Where the shares of a class of special shares are made purchasable for cancellation by the articles, then, except where the purchase is made on the open market or all the holders of the class consent to the purchase, the corporation may purchase the shares only pursuant to tenders received by the corporation upon request for tenders addressed to all the holders of the shares of the class, and the corporation shall accept only the lowest tenders. R.S.O. 1960, c. 71, s. 27 (11), *amended*.

Idem

(2) Where, in response to the invitation for tenders, two or more shareholders submit tenders at the same price and the tenders are accepted by the corporation as to part only of the shares offered, the corporation shall accept part of the shares offered in each tender in proportion as nearly as may be to the total number of shares offered in each tender. *New*.

Conversion  
of par  
shares to  
par shares

**36.**—(1) The articles of a corporation shall not provide for the conversion of shares with par value into shares with par value if the aggregate par value of the shares being converted is not equal to the aggregate par value of the shares into which they are converted.

par shares  
to no par  
shares

(2) Where, in accordance with the articles, shares with par value are converted into shares without par value, the issued capital of the corporation attributable to the shares resulting from the conversion shall be equal to the aggregate par value of the shares converted.

no par  
shares to  
par shares

(3) Where the articles provide for the conversion of shares without par value into shares with par value, no such share shall be converted unless that part of the issued capital attributable to the shares being converted is equal to the aggregate par value of the shares resulting from the conversion.

no par  
shares to  
no par  
shares

(4) Where, in accordance with the articles, shares without par value are converted into shares without par value, the issued capital shall remain unchanged. R.S.O. 1960, c. 71, s. 27 (15), *amended*.

of special  
shares

(5) Where special shares of a class are converted into the same or another number of shares of another class or classes, whether special or common, the shares converted thereupon become the same in all respects as the shares of the class or classes respectively into which they are converted, and the number of shares of each class affected by the conversion is changed and the articles are amended accordingly. R.S.O. 1960, c. 71, s. 27 (14).

Surrender  
of mutual  
fund shares

**37.**—(1) Where the only undertaking of a corporation is the business of investing the funds of the corporation, its articles may provide for the issuing of one or more classes of

mutual fund shares that have attached thereto conditions requiring the corporation to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof.

(2) Articles that provide for the issuing of mutual fund shares shall set out the conditions governing, Conditions and price

(a) the surrender of mutual fund shares or any fractions or parts thereof; and

(b) the determination of the price to be paid therefor and the manner and time of payment thereof. *New.*

**38.**—(1) A corporation shall not redeem or purchase special shares or accept mutual fund shares for surrender if the corporation is insolvent or if the redemption, purchase or surrender would render the corporation insolvent. Redemption, purchase or surrender while insolvent

(2) Special shares that are redeemed or purchased by a corporation are thereby cancelled, and the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly. R.S.O. 1960, c. 71, s. 27 (12, 13), *amended*. Cancellation on redemption, purchase or surrender

(3) Where mutual fund shares are accepted for surrender by a corporation, the shares are not thereby cancelled, and the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. *New.* Idem: mutual funds

**39.**—(1) Where authorized in its articles and subject to any restrictions contained therein, a corporation may purchase any of its common shares out of surplus. Purchase of common shares out of surplus:

(2) A corporation may purchase any of its common shares out of issued capital if the purchase is made, out of capital

(a) for the purpose of eliminating fractions of shares; or

(b) for the purpose of collecting or compromising indebtedness to the corporation.

(3) A corporation shall not purchase common shares under subsection 1 or 2 if the corporation is insolvent or if the purchase would render the corporation insolvent. Purchase while insolvent

(4) No purchase of common shares shall be made under this section by a corporation unless the purchase is authorized by an express resolution of the board of directors. Authoriza-tion



Method

(5) Where a corporation purchases its common shares under this section, the purchase shall be made,

- (a) by invitation addressed to all shareholders for tenders of shares and *pro rata* from the shares so tendered; or
- (b) from *bona fide* full-time employees and former employees of the corporation; or
- (c) where the corporation is offering its shares to the public, by purchase on the open market. *New.*

Cancellation  
or resale

**40.**—(1) Where common shares are purchased by a corporation under subsection 1 of section 39,

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the corporation are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
  - (i) the board of directors may at the time of the purchase cancel the shares, in which case the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly; or
  - (ii) the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation.

Cancellation

(2) Common shares or fractions thereof purchased under subsection 2 of section 39 are thereby cancelled and the authorized and issued capital are thereby decreased and the articles are amended accordingly. *New.*

Corporation  
insider re  
purchase  
and resale  
of own  
shares

**41.** Where a corporation purchases common shares under subsection 1 of section 39 or resells them under subclause ii of clause *b* of subsection 1 of section 40, the corporation shall be deemed to be an insider in respect of the purchase or resale, and sections 148 to 152 apply to the purchase or resale. *New.*

Perform-  
ance of  
agreement  
to purchase  
common  
shares

**42.** An agreement for the purchase by a corporation of its common shares is not invalid or unenforceable because of the possibility that the corporation may not be able to comply with section 39, but such agreement is,

- (a) subject to subsection 2 of section 135, valid if performed; and



- (b) if not performed, valid and enforceable to the extent the corporation is able to purchase its common shares at the time for performance. *New.*

**43.**—(1) A corporation may accept from any shareholder a donation of any of its shares without any repayment of capital in respect thereof. <sup>Donation of shares</sup>

(2) Shares accepted under subsection 1 are not thereby cancelled, and the board of directors may sell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. *New.* <sup>Sale of donated shares</sup>

### *Allotment, Issue and Transfer*

**44.**—(1) In the absence of a provision to the contrary in the articles or by-laws of the corporation, shares may be allotted and issued at such times and in such manner and to such persons or class of persons as the directors determine. <sup>Issue of shares</sup>

(2) Shares with par value shall not be allotted or issued except for a consideration at least equal to the product of the number of shares allotted or issued multiplied by the par value thereof. <sup>Consideration for par shares</sup>

(3) Subject to section 25, shares without par value shall not be allotted or issued except for such consideration as is fixed by the directors. <sup>Consideration for no par shares</sup>

(4) No share shall be issued until it is fully paid and a share is not fully paid until all the consideration therefor in cash, property or services, as determined under this section, has been received by the corporation. <sup>Fully-paid shares</sup>

(5) For the purposes of subsection 4 and paragraph 21 of subsection 2 of section 15 a document evidencing indebtedness does not constitute property and services shall be past services actually performed for the corporation, and the value of property or services shall be the value the directors determine by express resolution to be in all the circumstances of the transaction the fair equivalent of the cash value. R.S.O. 1960, c. 71, s. 31, *amended.* <sup>Idem</sup>

**45.**—(1) A corporation may provide by special by-law for the payment of commissions or allowing discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the corporation, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares, but, except in the case of mining, gas or oil corporations or corporations at least 75 per cent of whose assets are of a wasting character, no such commission or discount shall exceed 25 per cent of the amount of the subscription price. <sup>Commission on sale of shares</sup>

No  
unauthorized  
commissions

(2) Except as provided in subsection 1, no corporation shall apply any of its shares or capital, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares of the corporation or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares, whether the shares or capital is so applied by being added to the purchase money of any property acquired by the corporation or to the contract price of any work to be executed for the corporation, or is paid out of the nominal purchase money or contract price or otherwise. R.S.O. 1960, c. 71, s. 32, *amended*.

Shares  
personal  
property

**46.** The shares of a corporation are personal property. R.S.O. 1960, c. 71, s. 38, *amended*.

Restrictions  
on transfer

**47.—**(1) A corporation shall not impose restrictions on the transfer of shares except such restrictions as are authorized by the articles. R.S.O. 1960, c. 71, s. 39 (1), *amended*.

No public  
offer if  
transfer  
restricted

(2) A corporation that has imposed restrictions on the transfer of its shares shall not offer its shares to the public unless the restrictions are necessary,

(a) by or under any Act of Canada or Ontario as a condition to the obtaining, holding or renewal of authority to engage in any activity necessary to its undertaking; or

(b) for the purpose of achieving or preserving its status as a Canadian corporation for the purpose of any Act of Canada or Ontario. *New*.

Lien for  
indebted-  
ness

(3) Except in the case of shares listed on a stock exchange recognized by the Commission, where the articles or by-laws so provide the corporation has a lien to the extent of the debt on the shares registered in the name of a shareholder who is indebted to the corporation. R.S.O. 1960, c. 71, s. 39 (3), *amended*.

Subsidiaries  
not to hold  
shares of  
holding  
corporations

**48.—**(1) Except in the cases mentioned in this section, a corporation shall not be a shareholder of a corporation that is its holding corporation, and any allotment or transfer of shares of a corporation to its subsidiary corporation is void.

Application

(2) This section does not apply to a subsidiary holding shares as personal representative unless the holding corporation or a subsidiary thereof is beneficially interested under a trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

(3) This section does not prevent a subsidiary that on the 30th day of April, 1954, held shares of its holding corporation from continuing to hold such shares, but, subject to subsection 2, the subsidiary has no right to vote at meetings of shareholders of the holding corporation or at meetings of any class of shareholders thereof. Exception

(4) Subject to subsection 2, subsections 1 and 3 apply in relation to a nominee for a corporation that is a subsidiary as if the references in subsections 1 and 3 to such a corporation included references to a nominee for it. R.S.O. 1960, c. 71, s. 94. Nominees

### *Share Certificates*

**49.**—(1) Every shareholder is entitled to a share certificate in respect of the shares held by him, signed by the proper officers in accordance with the corporation's by-laws in that regard, but the corporation is not bound to issue more than one share certificate in respect of a share or shares held jointly by several persons, and delivery of a share certificate to one of several joint shareholders is sufficient delivery to all. Share certificates

(2) A corporation may charge a fee of not more than \$1 for every share certificate issued, except that, in the case of the allotment and issue of shares, no fee shall be charged. R.S.O. 1960, c. 71, s. 43 (1, 3). Fee

**50.** A share certificate shall be signed manually by at least one officer of the corporation or by or on behalf of a transfer agent or branch transfer agent of the corporation, and the corporation may by by-law provide that any additional signatures required on share certificates may be printed, engraved, lithographed or otherwise mechanically reproduced thereon, and in such event share certificates so signed are as valid as if they had been signed manually. R.S.O. 1960, c. 71, s. 46. Signing of share certificates

**51.**—(1) Every share certificate shall state upon its face, Contents of share certificates

- (a) the name of the corporation and the words "Incorporated under the law of the Province of Ontario" or words of like effect;
- (b) the name of the person to whom the share is issued as holder; and
- (c) the number and class of shares represented thereby and whether the shares are with par value or without par value and, if with par value, the par value thereof. R.S.O. 1960, c. 71, s. 45 (1), *amended*.



Statements  
on share  
certificates

(2) A share certificate issued for a share of a class of special shares shall,

- (a) legibly state on the certificate or have attached thereto a legible statement of the preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class of shares; or
- (b) legibly state on the certificate that there are preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class and that a copy of the full text thereof is obtainable on demand and without fee from the corporation.

Production  
of  
preferences,  
etc.

(3) Where a share certificate contains a statement as provided in clause *b* of subsection 2, the corporation shall furnish to the shareholder on demand without fee a copy of the full text of the preferences, rights, conditions, restrictions, prohibitions and limitations attaching to the share.

Lien on  
shares

(4) Where the articles or by-laws provide that a corporation has a lien on shares as authorized by subsection 3 of section 47, the right of the corporation to the lien shall be noted conspicuously on every share certificate issued by the corporation.

Transfer  
restricted

(5) A share certificate for a share the transfer of which is restricted in accordance with the articles shall have the restriction noted conspicuously on the certificate. *New.*

Fractional  
shares

**52.** Where, as a result of a change in the authorized capital of a corporation, a person becomes entitled to a fraction of a share, he is not entitled to be registered on the records of the corporation in respect thereof or to receive a share certificate therefor, but he is entitled to receive a bearer fractional certificate in respect of such fraction, and, on presentation at the head office of the corporation or at a place designated by the corporation of bearer fractional certificates for fractions that together represent a whole share, a share certificate for a whole share shall be issued in exchange therefor, and sections 63 to 97 apply thereto. R.S.O. 1960, c. 71, s. 37 (1, 2), *amended.*

#### BORROWING

Borrowing  
powers

**53.—**(1) When authorized by special by-law, the directors may,

- (a) borrow money on the credit of the corporation; or
- (b) issue, sell or pledge debt obligations of the corporation; or



- (c) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal, movable or immovable property of the corporation, including book debts, rights, powers, franchises and undertaking, to secure any debt obligations or any money borrowed, or other debt or liability of the corporation. R.S.O. 1960, c. 71, s. 58 (1), *amended*.

(2) Any by-law referred to in subsection 1 may,

Contents  
of by-law

- (a) limit the amount to be borrowed as determined by the by-law; and
- (b) provide for the delegation by the directors of the powers conferred on them under the by-law to such directors or officers of the corporation and to such extent and manner as is set out in the by-law. *New*.

**54.** Nothing in this Act prohibits the issue of debt obligations in bearer form. *New*.

Bearer  
debt  
obligations

**55.** A condition contained in a debt obligation or in an instrument for securing a debt obligation is not invalid by reason only that the debt obligation is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long. R.S.O. 1960, c. 71, s. 59, *amended*.

Irredeem-  
able debt  
obligation

**56.**—(1) Where a corporation makes a charge, mortgage or other instrument of hypothecation or pledge to secure its debt obligations, the corporation shall, forthwith after the making thereof, file a duplicate original or certified copy of the instrument in the office of the Minister, but such filing may be made by any interested person. R.S.O. 1960, c. 71, s. 60 (1), *amended*.

Filing  
debt  
obligations

(2) Where the filing is by an interested person under subsection 1, that person is entitled to recover from the corporation the amount of any prescribed fee paid by him on such filing. *New*.

Recovery  
of fee

(3) Subsection 1 does not apply to a charge or mortgage filed with the Minister under *The Corporation Securities Registration Act*, or any other Act. R.S.O. 1960, c. 71, s. 60 (2).

Exception  
R.S.O. 1960,  
c. 70

### *Indenture Trustees*

**57.**—(1) In this section and in sections 58 to 62,

Interpre-  
tation

- (a) "trust indenture" means any deed, indenture or document howsoever designated, including any supplement or amendment thereto, by the terms of

which a body corporate issues or guarantees debt obligations and in which a trustee is named as trustee for the holders of the debt obligations issued or guaranteed thereunder;

- (b) "trustee" means any person named as trustee under the terms of a trust indenture, whether or not the person is a trust company authorized to carry on business in Ontario. *New.*

Application  
of sections  
58 to 62

(2) This section and sections 58 to 62 shall apply to every body corporate, except corporations, offering their debt obligations to the public in Ontario under a trust indenture and to every corporation offering their debt obligations to the public under a trust indenture.

Resident  
trustee

(3) Every body corporate whose debt obligations are offered to the public in Ontario or issued under a trust indenture in Ontario shall have a trustee resident or authorized to do business in Ontario.

Statutory  
provisions  
in trust  
indentures

**58.—**(1) Trust indentures shall be deemed to contain the following provisions:

1. In the exercise of the rights, duties and obligations prescribed or conferred by the terms of the trust indenture, the trustee shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.
2. In the exercise of his rights, duties and obligations the trustee may, if he is acting in good faith, rely, as to the truth of the statements and the accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or other requirement of the trustee indenture or required by the trustee to be furnished to him in the exercise of his rights and duties under the trust indenture where,
  - (a) the statutory declarations, opinions, reports or certificates are furnished under subsection 1 of section 59, they comply with subsections 2 and 3 thereof; and
  - (b) the trustee examines the evidence furnished to him under section 59 in order to determine whether such evidence indicates compliance with the applicable requirements of the trust indenture.

3. The trustee shall be required to give to the holders of debt obligations issued under the trust indenture, within thirty days after the trustee becomes aware of the occurrence thereof, notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee in good faith determines that the withholding of such notice is in the best interests of the holders of the debt obligations and so advises the issuer in writing

(2) A person shall not be appointed a trustee under a trust indenture if a material conflict of interest exists in the trustee's role as a fiduciary thereunder at the time of the execution and delivery of the said trust indenture but if, notwithstanding the provisions of this section, such a material conflict of interest exists, the validity and enforceability of the said trust indenture, the security created thereby and thereunder and the securities issued thereunder shall not be affected in any manner whatsoever by reason only that such material conflict of interest exists but such trustee shall, within ninety days after ascertaining that he has such material conflict of interest, either eliminate such material conflict of interest or resign from office, and where a material conflict of interest arises subsequently to the appointment of the trustee under a trust indenture, he shall, within ninety days after ascertaining that he has such material conflict of interest, either eliminate such material conflict of interest or resign from office. *New.*

**59.**—(1) The issuer or guarantor of debt obligations issued under the trust indenture shall furnish to the trustee evidence of compliance with every covenant, condition or other requirement specified in the trust indenture to be furnished to the trustee or required by the trustee to be furnished to him in the exercise of his rights and duties under the trust indenture relating to,

- (a) the certification and delivery of debt obligations under the trust indenture:
- (b) the release or release and substitution of property subject to any mortgage, charge, lien or other encumbrance created by the trust indenture;
- (c) the satisfaction and discharge of the trust indenture;
- (d) the issuing of additional debt obligations thereunder; and

- (e) any other action or step required or permitted to be taken by the issuer, guarantor or trustee under the trust indenture or as a result of any obligation imposed by the trust indenture.

Idem

(2) Evidence of compliance referred to in clauses *a*, *b*, *c* and *d* of subsection 1 shall consist of,

- (a) statutory declarations made by officers of the issuer or guarantor authorized by the trust indenture stating that the covenant, condition or other requirement has been complied with in accordance with the terms of the trust indenture;
- (b) an opinion of a solicitor that the covenant, condition or other requirement has been complied with in accordance with the terms of the trust indenture; and
- (c) in the case of a covenant, condition or other requirement compliance with which is subject to the review or examination by auditors or accountants, an opinion or report of the auditor of the issuer or guarantor or any accountant licensed under *The Public Accountancy Act*, in each case approved by the trustee, as to the accuracy or reliability of the statements required to be reviewed or examined and whether or not the statements have been made in accordance with the terms of the trust indenture.

R.S.O. 1960,  
c. 317

Idem

(3) Evidence of compliance referred to in clause *e* of subsection 1, where it arises under a covenant, condition or other requirement of the trust indenture shall be in accordance with the report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him in accordance with the trust indenture, but if such report or opinion is provided by a director, officer or employee of the issuer or guarantor it shall be in the form of a statutory declaration.

Idem

(4) Evidence of compliance referred to in clause *e* of subsection 1, where it is required by the trustee to be furnished to him in the exercise of his rights and duties under the trust indenture shall be, so far as appropriate, in accordance with subsections 2 and 3.

Idem

(5) The evidence required under subsections 2, 3 and 4 shall include,



- (a) a statement by the person giving the evidence that he has read and is familiar with the provisions of the trust indenture under which it is required;
- (b) a brief statement of the nature and scope of the examination or investigation upon which the statements or opinions contained in the evidence are based;
- (c) a statement that, in the belief of the person giving the evidence, he has made such examination or investigation as is necessary to enable him to express an opinion whether the provisions of the trust indenture under which it is required have been complied with or satisfied; and
- (d) a statement whether in the opinion of such person the provisions of the trust indenture have been complied with or satisfied.

(6) The issuer or guarantor of debt obligations under the trust indenture shall furnish the trustee annually, and at any other time if the trustee so requires, a certificate that the issuer or guarantor has complied with all covenants, conditions or other requirements contained in the trust indenture that would, with the elapse of time or otherwise, constitute an event of default thereunder. Certificate of issuer or guarantor

(7) Nothing in this section prevents the inclusion in a trust indenture of provisions requiring evidence of compliance with covenants, conditions or other requirements in addition to those specified in this section. *New.* Additional provisions

**60.** Except as provided in paragraphs 1 and 2 of subsection 1 of section 58, a trust indenture to which section 58 applies shall not contain any provision relieving the trustee from liability arising thereunder and any such provision that is contained in a trust indenture is ineffective. *New.* Exculpatory clauses

**61.** A trustee under a trust indenture to which section 58 applies and any related person to such trustee shall not be appointed a receiver or receiver and manager or liquidator of the assets or undertaking of the issuer or guarantor of the debt obligations under the trust indenture. *New.* Trustees under trust indentures not to be appointed receivers, etc.

**62.** Sections 58, 59 and 60 apply to any trust indenture entered into after those sections come into force, or entered into before those sections come into force and under which debt obligations are outstanding or may be issued when those sections come into force. *New.* Application of sections 58-60

## INVESTMENT SECURITIES

*General*Interpre-  
tation**63.**—(1) In this section and in sections 64 to 97,

- (a) “adverse claim” includes a claim that a transfer is or would be unauthorized or wrongful or that a particular adverse person is the owner of or has an interest in the security;
- (b) “appropriate person”, when used to refer to a person endorsing a security, means,
  - (i) the person specified by the security or by special endorsement to be entitled to the security,
  - (ii) where the person so specified is described as a trustee or other fiduciary but is no longer serving in that capacity and notwithstanding that a successor has been appointed or qualified,
    - a. where only one person is so described, that person or his successor, or
    - b. where more than one person is so described, the remaining persons,
  - (iii) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise, his executor, administrator, committee, guardian or like fiduciary,
  - (iv) where the security or endorsement specified more than one person as joint tenants or with right of survivorship and by reason of death all cannot sign, the survivor or survivors,
  - (v) a person having the power to sign under the applicable law or controlling instrument, or
  - (vi) to the extent any of the foregoing persons may act through an agent, his authorized agent;
- (c) “bearer form” when applied to a security means a security that runs to bearer according to its terms and not by reason of any endorsement;

- (d) "broker" means a person engaged for all or part of his time in the business of buying and selling securities, who holds registration as a broker or in a similar capacity under *The Securities Act, 1966*, or <sup>1966, c. 142</sup> who is recognized for the purpose of sections 64 to 97 by the Commission as a broker, and who in the transaction concerned acts for or buys a security from or sells a security to a customer;
- (e) "clearing corporation" means a body corporate recognized as a clearing corporation by the Commission;
- (f) "custodian" means a bank to which the *Bank Act* <sup>1966-67, c. 87 (Can.)</sup> (Canada) applies, a trust company registered under *The Loan and Trust Corporations Act* or such other <sup>R.S.O. 1960, c. 222</sup> body corporate as may be recognized by the Commission as a custodian and which is acting as custodian for a clearing corporation;
- (g) "proper form" means regular on its face with regard to all formal matters;
- (h) "registered form" when applied to a security means a security that is not in bearer form and that specifies a person entitled to the security or the rights it evidences;
- (i) "security" means a security as defined in section 1 and includes a warrant.

(2) Sections 64 to 97 do not apply to a promissory note <sup>Application of ss. 64-97</sup> or bill of exchange to which the *Bills of Exchange Act* (Canada) <sup>R.S.C. 1952, c. 15 (Can.)</sup> applies. *New.*

**64.** A lien upon a security in favour of an issuer thereof <sup>Issuer's liens</sup> is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security. *New.*

**65.**—(1) In this section, "overissue" means the issue of <sup>Overissue</sup> securities in excess of the amount which the issuer has corporate power to issue.

(2) The provisions of this Act that validate a security or <sup>Idem</sup> compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue, but,

- (a) if an identical security that does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the

issuer to purchase and deliver such a security to him against surrender of the security, if any, that he holds; or

- (b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand. *New.*

#### Evidence

### **66.** In any action on a security,

- (a) unless specifically denied in the pleadings, each signature on the security or in a necessary endorsement is admitted;
- (b) where the effectiveness of a signature is put in issue, the burden of establishing its effectiveness is on the party claiming under the signature, but the signature is *prima facie* proof that it is genuine and authorized;
- (c) where signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defence or a defect going to the validity of the security; and
- (d) after it is shown that a defence or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defence or defect is ineffective. *New.*

#### Selection of laws

**67.**—(1) The validity of a security and the rights and duties with respect to registration of transfer of an issuer that is a corporation or a body corporate incorporated under the laws of Ontario are governed by this Act and the laws of Ontario.

#### Idem

(2) The validity of a security and the rights and duties with respect to registration of transfer of an issuer that is a body corporate other than a corporation or a body corporate under the laws of Ontario, are governed by the law, including the conflict of law rules, of the jurisdiction in which the body corporate was incorporated. *New.*

#### Form of transfer

**68.**—(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him in blank or to bearer.



(2) Where the buyer fails to pay the price as it comes due <sup>Default in payment</sup> under a contract of sale, the seller may recover the price,

- (a) of any security accepted by the buyer; and
- (b) if a security is not accepted by the buyer and its resale would be unduly burdensome or there is no readily available market. *New.*

*Rights and Liabilities of Issuer,  
Registrar and Transfer Agent*

**69.**—(1) The obligations and defences of an issuer apply <sup>Issuer</sup> to a body corporate that,

- (a) places or authorizes the placing of its name on a security, otherwise than as an authenticating trustee, registrar or transfer agent, to evidence that it represents a share, participation or other interest in its property or in an enterprise or to evidence its duty to perform an obligation evidenced by the security;
- (b) directly or indirectly creates fractional interests in its rights or property which fractional interests are evidenced by securities; or
- (c) becomes responsible for or in place of any other person described as an issuer in this section.

(2) The obligations and defences of an issuer apply to a <sup>Guarantor</sup> guarantor of a security to the extent of his guaranty whether or not his obligation is noted on the security.

(3) The person on whose behalf a register of transfers is <sup>Person maintaining transfer books</sup> maintained is an issuer for the purposes of the registration of a transfer under sections 92 to 95. *New.*

**70.**—(1) A purchaser for value shall be deemed to have <sup>Notice of terms on security</sup> notice of the terms of a security including those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a statute, ordinance, rule, regulation, order or other written law to the extent that the terms so referred to do not conflict with the stated terms, except that he shall be deemed not to have such notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) Except as otherwise provided in the case of certain <sup>Defence of issuer</sup> unauthorized signatures on issue, lack of genuineness of a security is a complete defence even against a purchaser for value and without notice.

Idem

(3) All other defences of the issuer including non-delivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defence.

Idem

(4) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement under which such security is to be issued or distributed. *New.*

Notice of defect

**71.**—(1) After an act or event that creates a right to immediate performance of the principal obligation evidenced by the security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or any defence of the issuer,

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not one to which clause *a* applies and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

Revoked call for redemption excepted

(2) Subsection 1 does not apply to a call for redemption that has been revoked. *New.*

Restriction on transfer

**72.**—(1) Unless noted conspicuously on the security, a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

Exception for securities of former private companies  
R.S.O. 1960,  
c. 71

(2) Where a corporation was incorporated as a private company under *The Corporations Act*, or any predecessor thereof, before this Act comes into force, the words "private company" appearing conspicuously on the face of its securities issued before this section comes into force shall be deemed to be notice of its restriction on the transfer of the securities for the purposes of subsection 1. *New.*

Unauthorized signatures on issue

**73.** An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favour of a purchaser for value and

without notice of the lack of authority if the signing has been done by,

- (a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or
- (b) an employee of the issuer, entrusted with responsibility for handling of the security. *New.*

**74.**—(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect, <sup>Completion of blanks</sup>

- (a) any person may complete it by filling in the blanks as authorized; and
- (b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security that has been improperly altered, <sup>Improper alteration</sup> even though fraudulently, remains enforceable but only according to its original terms. *New.*

**75.**—(1) Subject to sections 106 and 112, the issuer or the indenture trustee may treat the registered holder as the person <sup>Effect of registration</sup> entitled to receive notice of and to vote at meetings of the security holders and to receive any payment in respect of the security and otherwise to exercise all the rights and powers of an owner. R.S.O. 1960, c. 71, s. 47 (2), *amended.*

(2) Nothing in sections 64 to 97 shall be construed to affect <sup>Idem</sup> the liability of the registered owner of a security for calls, assessments or similar liabilities. *New.*

**76.**—(1) A body corporate placing its signature upon a security as authenticating trustee, registrar or transfer agent warrants to a purchaser for value without notice of the particular defect that, <sup>Warranties on issue</sup>

- (a) the security is genuine and in proper form;
- (b) its own participation in the issue of the security is within its capacity and within the scope of the authorization received by it from the issuer; and
- (c) it has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.



Idem

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects. *New.*

*Rights and Liabilities of Purchaser and Seller*

Rights  
acquired by  
purchasers

**77.**—(1) Upon delivery of a security, the purchaser acquires the rights in the security that his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later purchaser for value in good faith who was without notice of any adverse claim.

*bona fide*  
purchaser

(2) A purchaser for value in good faith and without notice of any adverse claim in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

Limited  
interest

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased. *New.*

Notice of  
adverse  
claims

**78.**—(1) A purchaser, including a broker for the seller or buyer, of a security is charged with notice of adverse claims if,

- (a) the security whether in bearer or registered form has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
- (b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on a security shall not be deemed such a statement.

Idem

(2) The fact that the purchaser, including a broker for the seller or the buyer, has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims, but if the purchaser has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

Idem

(3) An act or event that creates a right to immediate performance of the principal obligation evidenced by the security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase,



- (a) after one year from any date set for such presentment or surrender for redemption or exchange; or
- (b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date. *New.*

**79.**—(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange, but a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature in a necessary endorsement. Warranties  
on  
presentment

(2) A person by transferring a security to a purchaser for value warrants only that, Warranties  
on transfer

- (a) his transfer is effective and rightful;
- (b) the security is genuine and has not been materially altered; and
- (c) he knows no fact that might impair the validity of the security.

(3) Where a security is delivered by an intermediary known by the transferee to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery, but a broker is not an intermediary within the meaning of this subsection. Warranties  
of inter-  
mediary

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection 3. Warranties  
of pledgee

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section and the warranties of and in favour of the broker acting as an agent are in addition to applicable warranties given by and in favour of his customer. *New.* Warranties  
of broker

- Absence of endorsement**      **80.** Where a security in registered form has been delivered to a purchaser without a necessary endorsement, he may become a purchaser for value in good faith and without notice of any adverse claim only as of the time the endorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied. *New.*
- Endorsement**      **81.**—(1) An endorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.
- Idem**      (2) An endorsement of a security may be,
- (a) in blank, including to bearer; or
- (b) a special endorsement, specifying the person to whom the security is to be transferred or who has the power to transfer it,
- and a holder may convert an endorsement in blank into a special endorsement.
- Obligations of endorser**      (3) Unless otherwise agreed, the endorser by his endorsement assumes no obligation that the security will be honoured by the issuer.
- Partial endorsement**      (4) An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.
- Appropriate person**      (5) Whether the person signing is appropriate shall be determined as of the date of signing and an endorsement by such person does not become unauthorized for the purposes of this Act by virtue of any subsequent change of circumstances.
- Improper endorsement by fiduciary**      (6) Failure of a fiduciary to comply with a controlling instrument or with the law applicable to the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his endorsement unauthorized for the purposes of this Act. *New.*
- Delivery necessary**      **82.** An endorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears, or if the endorsement is on a separate document until the delivery of both the document and the security. *New.*

**83.** Unless the owner has ratified an unauthorized endorsement or is otherwise precluded from asserting its ineffectiveness, Effect of unauthorized endorsement

- (a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered security on registration of transfer; and
- (b) an issuer who registers the transfer of a security upon the unauthorized endorsement is subject to liability for improper registration. *New.*

**84.—**(1) Any person guaranteeing a signature of an endorser of a security warrants that at the time of signing, Guarantee of signature

- (a) the signature was genuine;
- (b) the signer was an appropriate person to endorse; and
- (c) the signer had legal capacity to sign,

but the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an endorsement of a security and by so doing warrants not only the signature but also the rightfulness of the particular transfer in all respects. Guarantee of endorsement

(3) No issuer may require a guarantee of endorsement as a condition to registration of transfer. Idem

(4) The warranties referred to in subsections 1 and 2 are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties. *New.* Liability of guarantor

**85.—**(1) Delivery to a purchaser occurs when, What constitutes delivery

- (a) he or a person designated by him acquires possession of a security;
- (b) his broker acquires possession of a security specially endorsed or issued in the name of the purchaser;
- (c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser;

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries in the records of a clearing corporation are made under section 91.

*Idem*

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in clauses *b*, *c* and *e* of subsection 1, but where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

Notice of  
adverse  
claim  
after  
delivery

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser, but as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.  
*New.*

Duty of  
seller to  
deliver

**86.**—(1) Unless otherwise agreed where a sale of a security is made on a stock exchange recognized for the purposes of sections 64 to 97 by the Commission or otherwise through brokers,

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or, if requested, causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the recognized stock exchange on which the transaction took place.

*Idem*

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him.



(3) Subsection 2 applies to a sale to a broker purchasing <sup>Idem</sup> on his own account unless the sale is made on a recognized stock exchange. *New.*

**87.**—(1) Any person against whom the transfer of a <sup>Action for wrongful transfer</sup> security is wrongful for any reason, including his incapacity, may against anyone else except a purchaser for value in good faith and without notice of any adverse claim reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized <sup>Idem</sup> endorsement the owner may also reclaim or obtain possession of the security even from a purchaser for value in good faith and without notice of any adverse claim if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this Act relating to unauthorized endorsements.

(3) The right to obtain or reclaim possession of a security <sup>Specific performance and injunction</sup> may be specially enforced by specific performance or its transfer enjoined. *New.*

**88.**—(1) Unless otherwise agreed, the transferor shall on <sup>Transferor's duty to provide requisites for registration of transfer</sup> due demand supply his purchaser with any proof of his authority to transfer or with any other requisite that may be necessary to obtain registration of the transfer of the security, but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses.

(2) Failure to comply with a demand made under subsection 1 within a reasonable time gives the purchaser the right <sup>Effect of failure</sup> to reject or rescind the transfer. *New.*

**89.** An agent or bailee who in good faith, including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities, has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal has no right to dispose of them. *New.* <sup>Transfer by agent in good faith not conversion</sup>

**90.** A contract for the sale of securities is not enforceable <sup>Contract for sale</sup> by way of action or defence unless,

- (a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

- (b) delivery of the security has been accepted or payment has been made, but the contract is enforceable under this provision only to the extent of such delivery or payment;
- (c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under clause *a* has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within a reasonable time after its receipt; or
- (d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

Transfer  
through  
clearing  
corporation

**91.—(1)** If a security,

- (a) is in the custody of a clearing corporation or of a custodian or nominee of either, subject to the instructions of the clearing corporation;
- (b) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian or a nominee of either; and
- (c) is shown on the account of a transferor or pledgor in the records of the clearing corporation,

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries in the records of the clearing corporation, reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

Interests in  
fungible  
bulk

(2) Under this section entries may be in respect of like securities or interests therein as part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

Constructive  
endorsement  
and  
delivery

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank representing the amount of the obligation or the number of shares or rights transferred or pledged.

(4) If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party. <sup>Idem</sup>

(5) A transferee or pledgee under this section is a holder. <sup>Holder</sup>

(6) A transfer or pledge under this section does not constitute a registration of transfer under sections 92 to 96. <sup>Not registration</sup>

(7) That entries made in the records of the clearing corporation as provided in subsection 1 are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby. *New.* <sup>Error in records</sup>

### *Registration*

**92.**—(1) Where a security in registered form is presented to the issuer with a request to register a transfer, the issuer is under a duty to register the transfer as requested if, <sup>Duty of issuer to register transfer</sup>

- (a) the security is endorsed by the appropriate person or persons;
- (b) reasonable assurance is given that those endorsements are genuine and effective;
- (c) the issuer has no notice of an adverse claim;
- (d) any applicable law relating to the collection of taxes has been complied with; and
- (e) the transfer is not contrary to applicable restrictions or is not of a share in respect of which the corporation is entitled to a lien and exercises its right to refuse registration.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer. *New.* <sup>Liability for undue delay</sup>

**93.**—(1) For the purpose of obtaining reasonable assurance that each necessary endorsement required by section 81 is genuine and effective, the issuer may require a guarantee of the signature of the person endorsing or, where such guarantee is lacking, <sup>Assurances required by issuer</sup>

- (a) where the endorsement is by an agent, appropriate assurance of authority to sign;

- (b) where the endorsement is by fiduciary, or a successor on whom title or control vests on the death of the holder, appropriate evidence of appointment or incumbency;
- (c) where there is more than one fiduciary or successor, reasonable assurance that all who are required to sign have done so; and
- (d) where the endorsement is by a person not covered by a person mentioned in this section, assurance appropriate to the case equivalent as nearly as may be to those required by this section.

Sufficiency  
of guarantee

(2) A "guarantee of the signature" in subsection 1 means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible, and the issuer may adopt standards with respect to responsibility if such standards are not manifestly unreasonable. *New.*

Appropriate  
evidence of  
appoint-  
ment or  
incumbency

(3) For the purposes of subsection 1, "appropriate evidence of appointment or incumbency" means,

- (a) if the fiduciary or successor claims by virtue of a grant of probate or letters of administration or other instrument issued or purporting to be issued by a court or other judicial authority in any jurisdiction, production of the same or a notarial copy thereof or extract therefrom or a certificate of such grant under the seal of such court or other authority without any proof of the authenticity of such seal or other proof whatever and deposit of a copy thereof;
- (b) if the fiduciary or successor claims by virtue of the laws of any jurisdiction in which any transmission or vesting of title or control takes place without a grant of probate or letters of administration or other court or judicial action, production and deposit of proof thereof in accordance with the laws of such jurisdiction and reasonable evidence of such laws; or
- (c) if the net value of the estate of the deceased holder is less than \$1,500 or if the market value of the shares or securities is less than \$300, proof thereof to the reasonable satisfaction of the issuer,

together with, in any such event, production and deposit by one or more of the fiduciaries or successors of a sworn statement showing the nature of the transmission or vesting of title or control, as the case may be. R.S.O. 1960, c. 71, s. 52, *amended.*



(4) The issuer is not charged with notice of the contents of any document obtained for the purposes of subsection 3 except to the extent that the contents relate directly to the appointment or incumbency. *New.* Other contents not notice

**94.**—(1) An issuer to whom a security is presented for registration has notice of an adverse claim if, Notice to issuer of adverse claims

- (a) the issuer receives written notice of the adverse claim evidenced by an order or judgment of a court of competent jurisdiction and the notice is received at a time and in a manner that affords the issuer a reasonable opportunity to act on it before the issuance of a new, reissued or reregistered security and the notification identifies the registered owner, the claimant and the issue of which the security is a part, and provides an address for communications directed to the claimant; or
- (b) the issuer is given written notice by the registered owner that the security is lost, apparently destroyed or wrongfully taken.

(2) An issuer shall not be deemed to have notice of an adverse claim otherwise than as provided in subsection 1. Idem

(3) The issuer may register a transfer where he has notice of an adverse claim if he has given notice to both the registered owner and the claimant by registered mail to the address provided by them for the purpose that the security has been presented for registration by a named person and that the transfer will be registered unless prior to the expiration of thirty days from the date of mailing the notification there is filed with the issuer, Registration after notice

- (a) an appropriate restraining order, injunction or other process issued from a court of competent jurisdiction; or
- (b) an indemnity bond sufficient in the issuer's opinion to protect the issuer and any transfer agent, registrar or other agent of the issuer from any loss which it or they may suffer by complying with the adverse claim. *New.*

**95.**—(1) The issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if, Liability of issuer

- (a) there were on or with the security the necessary endorsements; and

- (b) the issuer had not notice of adverse claims or, having had notice thereof, proceeded to register the transfer in accordance with subsection 3 of section 94.

Idem

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless,

- (a) the registration was pursuant to subsection 1;
  - (b) the owner is precluded from asserting any claim for registering the transfer under subsection 1 of section 96; or
  - (c) such delivery would result in overissue, in which case the issuer's liability is governed by section 65.
- New.*

Lost, etc.,  
securities

**96.**—(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact in writing before the issuer registers a transfer of the security, the owner is precluded from asserting against the issuer any claim for registering the transfer under section 95 or any claim to a new security under this section.

Replacing  
lost, etc.,  
securities

(2) Where the owner of a security claims that the security has been lost, apparently destroyed or wrongfully taken, the issuer shall issue a new security in place of the original security if the owner,

- (a) so requests before the issuer has notice that the security has been acquired by a purchaser for value without notice of an adverse claim;
- (b) files with the issuer an indemnity bond sufficient in the issuer's opinion to protect the issuer and any transfer agent, registrar or other agent of the issuer from any loss that it or they may suffer by complying with the request to issue a new security;
- (c) satisfies any other reasonable requirements imposed by the issuer.

Rights of  
*bona fide*  
purchaser

(3) If, after the issue of the new security, a purchaser for value without notice of an adverse claim of the original security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue in which event the issuer's liability is governed by section 65.

Rights of  
issuer

(4) In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom

it was issued or any person taking under him except a purchaser for value without notice of an adverse claim. *New.*

**97.**—(1) A person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities is under a duty to exercise good faith and due diligence in performing his functions. Duty of agents for issuer

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent. *New.* Notice to agents for issuer

## SHAREHOLDERS

### *Rights*

**98.**—(1) Where a person is shown on the records of a corporation as holding a share as a personal representative, the receipt by such person is a valid and binding discharge to the corporation for any payment made in respect of the share whether notice of any trust has been given to the corporation or not, and the corporation is not bound to see to the application of the money paid to him. R.S.O. 1960, c. 71, s. 47 (2, 3), *amended.* Dealings by corporation with personal representatives

(2) Where shares are purchased by a corporation under subsection 1 of section 39 or subsection 2 of section 100 or accepted by a corporation under subsection 3 of section 38 or section 43 and are not thereby cancelled, no person is entitled to receive notice of or to vote at meetings of shareholders or to receive any payment in respect of the shares whether by way of dividend or otherwise until such shares are resold. *New.* Corporation not a shareholder of own shares

**99.**—(1) Subject to subsection 2, a shareholder of a corporation may maintain an action in a representative capacity for himself and all other shareholders of the corporation suing for and on behalf of the corporation to enforce any right, duty or obligation owed to the corporation under this Act or under any other statute or rule of law or equity that could be enforced by the corporation itself, or to obtain damages for any breach of any such right, duty or obligation. Representative actions on behalf of corporation

(2) An action under subsection 1 shall not be commenced until the shareholder has obtained an order of the court permitting the shareholder to commence the action. Leave

(3) A shareholder may, upon at least seven days notice to the corporation, apply to the court for an order referred to in subsection 2, and, if the court is satisfied that, Application for order to commence action

- (a) the shareholder was a shareholder of the corporation at the time of the transaction or other event giving rise to the cause of action;
- (b) the shareholder has made reasonable efforts to cause the corporation to commence or prosecute diligently the action on its own behalf; and
- (c) the shareholder is acting in good faith and it is *prima facie* in the interests of the corporation or its shareholders that the action be commenced,

the court may make the order upon such terms as the court thinks fit, except that the order shall not require the shareholder to give security for costs.

Application  
for order  
for interim  
costs

(4) At any time or from time to time while an action commenced under this section is pending, the plaintiff may apply to the court for an order for the payment to the plaintiff by the corporation of reasonable interim costs, including solicitor's and counsel fees and disbursements, for which interim costs the plaintiff shall be accountable to the corporation if the action is dismissed with costs on final disposition at the trial or on appeal.

Trial and  
judgment

(5) An action commenced under this section shall be tried by the court and its judgment or order in the cause, unless the action is dismissed with costs, may include a provision that the reasonable costs of the action are payable to the plaintiff by the corporation or other defendants taxed as between a solicitor and his own client.

Discon-  
tinuance  
and  
settlement

(6) An action commenced under this section shall not be discontinued, settled or dismissed for want of prosecution without the approval of the court and, if the court determines that the interests of the shareholders or any class thereof may be substantially affected by such discontinuance, settlement or dismissal, the court, in its discretion, may direct that notice in manner, form and content satisfactory to the court shall be given, at the expense of the corporation or any other party to the action as the court directs, to the shareholders or class thereof whose interests the court determines will be so affected.  
*New.*

Rights of  
dissenting  
shareholders

**100.**—(1) If, at a meeting of shareholders or of any class of shareholders of a corporation that is not offering its shares to the public,

- (a) a resolution passed by the directors authorizing the sale, lease, exchange or other disposition of the undertaking of the corporation or any part thereof as an



entirety or substantially as an entirety is confirmed with or without variation by the shareholders;

- (b) a resolution passed by the directors authorizing an amendment to the articles to delete therefrom a provision restricting the transfer of the shares of the corporation or of any class thereof is confirmed with or without variation by the shareholders; or
- (c) a resolution approving an agreement for the amalgamation of the corporation with one or more other corporations, is confirmed by the shareholders,

any shareholder who has voted against the confirmation of the resolution may within ten days after the date of the meeting give notice in writing to the corporation requiring it to purchase his shares.

(2) Within ninety days from the date of the completion of the sale or disposition or the issue of the certificate of amendment or amalgamation, as the case may be, the corporation, or amalgamated corporation, as the case may be, shall purchase the shares of every shareholder who has given notice under subsection 1, and every such shareholder shall sell his shares to the corporation. Corporation bound to purchase shares

(3) The corporation shall not purchase any shares under subsection 2 if it is insolvent or if the purchase would render it insolvent. Saving

(4) The price and terms of the purchase of such shares shall be as may be agreed upon by the corporation and the dissenting shareholder, but, if they fail to agree, the price and terms shall be as determined by the court on the application of the dissenting shareholder. Price of shares

(5) Any shares purchased under subsection 2 shall not be cancelled by reason only of such purchase and the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. Sale of shares

(6) If the sale or disposition is not completed or the certificate of amendment or amalgamation is not issued, the rights of the dissenting shareholder under this section cease and the corporation shall not purchase the shares of such shareholder under this section. R.S.O. 1960, c. 71, s. 99, *amended*. Where sale not completed

Requisition  
for by-law  
or  
resolution

**101.—(1)** The persons holding equity shares carrying at least 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding may requisition the directors to call a meeting of the directors for the purpose of passing any by-law or resolution that may properly be passed at a meeting of the directors duly called, constituted and held for that purpose.

Form of  
requisition

(2) The requisition shall set out the by-law or resolution, as the case may be, that is required to be passed at the meeting and shall be signed by the requisitionists and deposited at the head office of the corporation, and may consist of several documents in like form, each signed by one or more requisitionists.

Meeting of  
directors

(3) Upon deposit of the requisition, the directors shall forthwith call a meeting of the directors for the purpose of passing the by-law or resolution, as the case may be, set out in the requisition.

Meeting of  
shareholders

(4) Where the directors do not within twenty-one days from the date of the deposit of the requisition,

(a) call and hold such a meeting and pass such a by-law or resolution; and

(b) if the by-law or resolution requires confirmation at a general meeting of the shareholders, call a general meeting of the shareholders for the purpose of confirming the by-law or resolution,

any of the requisitionists may call a general meeting of the shareholders for the purpose of passing such by-law or resolution, and the meeting shall be held within sixty days from the date of the deposit of the requisition.

Notice

(5) A meeting of the shareholders called under subsection 4 shall be called as nearly as possible in the same manner as meetings of shareholders are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.

Validity of  
by-law or  
resolution

(6) Where a by-law or resolution is passed at a meeting of the shareholders called under subsection 4, either as set out in the requisition or as varied at the meeting, it is as valid and effective as if it had been passed at a meeting of the directors duly called, constituted and held for that purpose and confirmed at a meeting of the shareholders duly called, constituted and held for that purpose, and, if the resolution or by-law is passed by at least two-thirds of the votes cast at the meeting of the shareholders called under

subsection 4, it shall be conclusively deemed to be a special resolution or special by-law, as the case may be, for the purposes of this Act.

(7) The corporation shall,

Repayment  
of expenses

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the failure of the directors to act in accordance with subsections 3 and 4; and
- (b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting called under subsection 4, the shareholders, by a majority of the votes cast, reject the reimbursement of the requisitionists.

(8) Where a by-law or resolution in respect of which a meeting is required by requisition under this section is not passed at the meeting, no requisition for a meeting in respect of a similar by-law or resolution shall be made for a period of at least two years. *New.*

New  
requisition  
on same  
subject

**102.**—(1) On the requisition in writing of the persons holding equity shares carrying at least 5 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, the directors shall,

Circulation  
of share-  
holders'  
resolutions,  
etc.

- (a) give to the shareholders entitled to notice of the next meeting of shareholders notice of any resolution that may properly be moved and is intended to be moved at that meeting; or
- (b) circulate to the shareholders entitled to vote at the next meeting of shareholders a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or with respect to the business to be dealt with at that meeting.

(2) The notice or statement or both, as the case may be, shall be given or circulated by sending a copy thereof to each shareholder entitled thereto in the same manner and at the same time as that prescribed by this Act, the articles or the by-laws, for the sending of notice of meetings of shareholders.

Notice

(3) Where it is not practicable to send the notice or statement or both at the same time as the notice of the meeting is sent, the notice or statement or both shall be sent as soon as practicable thereafter.

Idem

Deposit of  
requisition,  
etc.

(4) The directors are not bound under this section to give notice of any resolution or to circulate any statement unless,

(a) the requisition, signed by the requisitionists, is deposited at the head office of the corporation,

(i) in the case of a requisition requiring notice of a resolution to be given, not less than twenty-one days before the meeting where the corporation is offering its securities to the public and not less than ten days before the meeting where the corporation is not offering its securities to the public,

(ii) in the case of a requisition requiring a statement to be circulated, not less than fourteen days before the meeting where the corporation is offering its securities to the public and not less than seven days before the meeting where the corporation is not offering its securities to the public; and

(b) there is deposited with the requisition a sum reasonably sufficient to meet the expenses of the corporation in giving effect thereto.

Where  
directors  
not bound  
to circulate  
statement

(5) The directors are not bound under this section to circulate any statement if, on the application of the corporation or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and on any such application the court may order the costs of the corporation to be paid in whole or in part by the requisitionists notwithstanding that they are not parties to the application.

Where no  
liability

(6) No corporation or a director, officer or employee thereof or person acting on its behalf, except a requisitionist, is liable in damages or otherwise by reason only of the giving of a notice or the circulation of a statement, or both, in compliance with this section.

Duty to  
deal with  
requisitioned  
matter

(7) Notwithstanding anything in the by-laws of the corporation, where the requisitionists have complied with this section, the resolution, if any, mentioned in the requisition shall be dealt with at the meeting to which the requisition relates.

Repayment  
of expenses

(8) The corporation shall pay to the requisitionists the sum deposited under clause *b* of subsection 4 unless at the meeting to which the requisition relates the shareholders by a majority of the votes cast reject the repayment to the requisitionists. R.S.O. 1960, c. 71, s. 309 (1-8), *amended*.



*Liabilities*

**103.**—(1) Where the issued capital of a corporation is decreased by an amendment to the articles, each person who was a shareholder on the effective date of the amendment is individually liable to the creditors of the corporation for the debts due on that date to an amount not exceeding the amount of the repayment to him. Liability on decrease of issued capital

(2) A person is not liable under subsection 1 unless, Limitation of liability

(a) the corporation has been sued for the debt within six months after the effective date of the amendment and execution has been returned unsatisfied in whole or in part; and

(b) he is sued for the debt in a court of competent jurisdiction within two years from the effective date of the amendment.

(3) After execution has been so returned, the amount due on the execution, not exceeding the amount of the repayment to the person, is the amount recoverable against such person. Idem

(4) Where it is made to appear that there are numerous shareholders who may be liable under this section, the court of competent jurisdiction may permit an action to be brought against one or more of them as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such shareholders as may be found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined. Class actions

(5) No person holding shares in the capacity of a personal representative and registered on the records of the corporation as a shareholder and therein described as representing in such capacity a named estate, person or trust is personally liable under this section, but the estate, person or trust is subject to all liabilities imposed by this section. R.S.O. 1960, c. 71, s. 36, *amended*. Shareholder holding shares in fiduciary capacity

**104.** A shareholder of a corporation as such is not answerable or responsible for any act, default, obligation or liability of the corporation, or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the corporation. R.S.O. 1960, c. 71, s. 55 (1), *amended*. Shareholder's liability limited

*Meetings*Place of  
meetings

**105.**—(1) Subject to subsections 2 and 3, the meetings of the shareholders shall be held at the place where the head office of the corporation is located.

## Exception

(2) Where the by-laws of the corporation so provide, the meetings of the shareholders may be held at any place within Ontario.

## Idem

(3) Where the articles of the corporation so provide, the meetings of the shareholders may be held at one or more places outside Ontario specified therein. R.S.O. 1960, c. 71, s. 74 (1-3), *amended*.

Share-  
holders'  
meetings

**106.**—(1) Subject to subsection 2 and in the absence of other provisions in that behalf in the articles or by-laws of the corporation,

(a) notice of the time and place for holding a meeting of the shareholders shall be given to each person who is entitled to notice of meetings and who on the record date for notice, appears on the records of the corporation as a shareholder by sending the notice by prepaid mail to his latest address as shown on the records of the corporation,

(i) in the case of a corporation that is offering its securities to the public, twenty-one days or more before the date of the meeting, and

(ii) in the case of a corporation that is not offering its securities to the public, ten days or more before the date of the meeting,

but in no case more than fifty days before the date of the meeting;

(b) all questions proposed for the consideration of the shareholders at a meeting of shareholders shall be determined by the majority of the votes cast, and the chairman presiding at the meeting has a second or casting vote in case of an equality of votes;

(c) the chairman presiding at a meeting of shareholders may, with the consent of the meeting and subject to such conditions as the meeting decides, adjourn the meeting from time to time and from place to place;

(d) the president or, in his absence, a vice-president who is a director shall preside as chairman at a meeting of shareholders, but, if there is no president

or such a vice-president or if at a meeting neither of them is present within fifteen minutes after the time appointed for the holding of the meeting, the shareholders present shall choose a person from their number to be the chairman;

- (e) unless a poll is demanded, an entry in the minutes of a meeting of shareholders to the effect that the chairman declared a motion to be carried is admissible in evidence as *prima facie* proof of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

(2) The articles or by-laws of the corporation shall not <sup>Notice</sup> provide for fewer than,

- (a) twenty-one days notice in the case of a corporation that is offering its securities to the public, or
- (b) ten days notice in the case of a corporation that is not offering its securities to the public,

for meetings of shareholders but in no case shall notice be given more than fifty days before the date of the meeting and the articles or by-laws shall not provide that notice may be given otherwise than individually.

(3) If a poll is demanded, it shall be taken in such manner <sup>Poll</sup> as the by-laws prescribe, and, if the by-laws make no provision therefor, then as the chairman directs. R.S.O. 1960, c. 71, s. 79, *amended*.

**107.** A corporation shall hold an annual meeting of its <sup>Annual meetings</sup> shareholders not later than eighteen months after its incorporation and subsequently not more than fifteen months after the holding of the last preceding annual meeting and at such meeting any shareholder shall have an opportunity to raise any matter relevant to the affairs and business of the corporation. R.S.O. 1960, c. 71, s. 306, *amended*.

**108.** The directors may at any time call a general meeting <sup>General meetings</sup> of the shareholders for the transaction of any business, the general nature of which is specified in the notice calling the meeting. R.S.O. 1960, c. 71, s. 307.

**109.**—(1) The persons holding equity shares carrying at least 5 per cent of the voting rights attached to all equity <sup>Requisition for shareholders' meeting</sup> shares of the corporation for the time being outstanding may requisition the directors to call a general meeting of the shareholders for any purpose that is connected with the affairs of the corporation and that is not inconsistent with this Act.

- Requisition (2) The requisition shall state the general nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the head office of the corporation and may consist of several documents in like form, each signed by one or more requisitionists.
- Duty of directors to call meeting (3) Upon deposit of the requisition, the directors shall forthwith call a general meeting of the shareholders for the transaction of the business stated in the requisition.
- Where requisitionists may call meeting (4) If the directors do not within thirty days from the date of the deposit of the requisition call and hold the meeting, any of the requisitionists may call the meeting, which shall be held within sixty days from the date of the deposit of the requisition.
- Calling of meeting (5) A meeting called under this section shall be called as nearly as possible in the same manner as meetings of shareholders are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.
- Repayment of expenses (6) The corporation shall,
- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the action taken by them under subsection 4; and
  - (b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,
- unless, at the meeting, the shareholders by a majority of the votes cast reject the reimbursement of the requisitionists. R.S.O. 1960, c. 71, s. 308, *amended*.
- Idem, on court order **110.** Notwithstanding section 109, upon application by a shareholder of a corporation, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the corporation or its shareholders that the meeting be held on requisition, may make an order, upon such terms as to security for the costs of holding the meeting or otherwise as to the court seem fit, requiring the directors to call a general meeting of the shareholders for any purpose that is connected with the affairs of the corporation and that is not inconsistent with this Act. *New.*



**111.** If for any reason it is impracticable to call a meeting of shareholders of a corporation in any manner in which meetings of shareholders may be called or to conduct the meeting in the manner prescribed by this Act, the articles or by-laws, the court may, on the application of a director or a shareholder who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the court thinks fit, and any meeting called, held and conducted in accordance with the order shall for all purposes be deemed to be a meeting of shareholders of the corporation duly called, held and conducted. R.S.O. 1960, c. 71, s. 310, *amended*. Court may direct method of holding meetings

**112.**—(1) The by-laws may provide for the fixing in advance of a date as the record date, Record dates

(a) for the determination of the shareholders entitled to notice of meetings of the shareholders which record date for notice shall not be more than fifty days before the date of the meeting and not fewer than the minimum number of days for notice of the meeting and where no such record date for notice is fixed by by-law, the record date for notice shall be at the close of business on the day next preceding the day on which notice is given or sent; and

(b) for the determination of the shareholders entitled to vote at meetings of the shareholders, which record date for voting shall be not more than forty-eight hours, excluding Saturdays and holidays, before the date of the meeting and where no such record date for voting is fixed by by-law, the record date for voting shall be at the time of the taking of the vote. *New.*

(2) The holder of each common share and, unless the articles condition, restrict, limit or prohibit the right to vote, the holder of each special share who, on the record date for voting, appears on the records of the corporation as a shareholder is entitled to one vote for each share held by him at all meetings of the shareholders of the corporation, or such greater number of votes for each share respecting such matters as the articles provided. R.S.O. 1960, c. 71, s. 29, *amended*. Voting rights

**113.**—(1) Where a person holds shares as a personal representative, that person or his proxy is the person entitled to vote at all meetings of shareholders in respect of the shares so held by him. Personal representative

Mortgagee,  
etc.

(2) Where a person mortgages or hypothecates his shares, that person or his proxy is the person entitled to vote at all meetings of shareholders in respect of such shares unless, in the instrument creating the mortgage or hypothec, he has expressly empowered the person holding the mortgage or hypothec to vote in respect of such shares, in which case, subject to the articles, such holder or his proxy is the person entitled to vote in respect of the shares. R.S.O. 1960, c. 71, s. 77, *amended*.

Joint  
shareholders

**114.** Where two or more persons hold the same share or shares jointly, any one of such persons present at a meeting of shareholders has the right in the absence of the other or others to vote in respect of such share or shares, but, if more than one of such persons are present or represented by proxy and vote, they shall vote together as one on the share or shares jointly held by them. R.S.O. 1960, c. 71, s. 78, *amended*.

Interpre-  
tation

**115.** In this section and in sections 116 to 121,

- (a) "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy;
- (b) "information circular" means the circular referred to in subsection 1 of section 118;
- (c) "proxy" means a completed and executed form of proxy by means of which a shareholder has appointed a person as his nominee to attend and act for him and on his behalf at a meeting of shareholders;
- (d) "solicit" and "solicitation" include,
  - (i) any request for a proxy whether or not accompanied by or included in a form of proxy,
  - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
  - (iii) the sending or delivery of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
  - (iv) the sending or delivery of a form of proxy to a shareholder under section 117,

but do not include,

- (v) the sending or delivery of a form of proxy to a shareholder in response to an unsolicited request made by him or on his behalf, or
- (vi) the performance by any person of ministerial acts or professional services on behalf of a person soliciting a proxy. 1966, c. 28, s. 4, *part.*

**116.**—(1) Every shareholder, including a shareholder that <sup>Proxies</sup> is a body corporate, entitled to vote at a meeting of shareholders may by means of a proxy appoint a person, who need not be a shareholder, as his nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy.

(2) A proxy shall be executed by the shareholder or his <sup>Execution and termination</sup> attorney authorized in writing or, if the shareholder is a body corporate, under its corporate seal or by an officer or attorney thereof duly authorized, and ceases to be valid one year from its date.

(3) In addition to the requirements, where applicable, of <sup>Contents</sup> section 120, a proxy shall contain the date thereof and the appointment and name of the nominee and may contain a revocation of a former proxy and restrictions, limitations or instructions as to the manner in which the shares in respect of which the proxy is given are to be voted or that may be necessary to comply with the laws of any jurisdiction in which the shares of the corporation are listed on a stock exchange or a restriction or limitation as to the number of shares in respect of which the proxy is given.

(4) In addition to revocation in any other manner per- <sup>Revocation</sup> mitted by law, a proxy may be revoked by an instrument in writing executed by the shareholder or by his attorney authorized in writing or, if the shareholder is a body corporate, under its corporate seal or by an officer or attorney thereof duly authorized, and deposited either at the head office of the corporation at any time up to and including the last business day preceding the day of the meeting, or any adjournment thereof, at which the proxy is to be used or with the chairman of such meeting on the day of the meeting, or adjournment thereof, and upon either of such deposits the proxy is revoked.

(5) The directors may by resolution fix a time not exceeding <sup>Time limit for deposit</sup> forty-eight hours, excluding Saturdays and holidays, preceding any meeting or adjourned meeting of shareholders before which time proxies to be used at that meeting must be

deposited with the corporation or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting or in the information circular relating thereto. 1966, c. 28, s. 4, *part*.

Mandatory  
solicitation  
of proxies

**117.** Subject to section 119, the management of a corporation shall, concurrently with or prior to giving notice of a meeting of shareholders of the corporation, send by prepaid mail to each shareholder who is entitled to vote at such meeting at his latest address as shown on the records of the corporation a form of proxy that complies with section 120 for use at the meeting. 1966, c. 28, s. 4, *part, amended*.

Information  
circular

**118.—**(1) Subject to subsection 2 and section 119, no person shall solicit proxies unless,

- (a) in the case of a solicitation by or on behalf of the management of a corporation, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each shareholder of the corporation whose proxy is solicited at his latest address as shown on the records of the corporation; or
- (b) in the case of any other solicitation, the person making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each shareholder of the corporation whose proxy is solicited.

Where  
ss. 117,  
118 (1)  
apply

(2) Subsection 1 does not apply to,

- (a) any solicitation, otherwise than by or on behalf of the management of a corporation, where the total number of shareholders whose proxies are solicited is not more than fifteen;
- (b) any solicitation by a person made pursuant to section 79 of *The Securities Act, 1966*; and
- (c) any solicitation by a person in respect of shares of which he is the beneficial owner.

1966, c. 142

Untrue  
solicitations  
an offence

(3) Section 256 applies to a solicitation that is subject to this section by means of a form of proxy, information circular or other communication. 1966, c. 28, s. 4, *part, amended*.

Where  
ss. 117,  
118 (1)  
apply

**119.—**(1) Section 117 and subsection 1 of section 118 apply only to a corporation that is offering its securities to the public.



(2) Upon the application of any interested person, the Commission may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order, on such terms and conditions as seem to it just and expedient, exempting, in whole or in part, any person from the requirements of section 117 or from the requirements of subsection 1 of section 118. 1966, c. 28, s. 4, *part, amended*.

**120.** Where section 117 or 118 applies to a solicitation of proxies, <sup>Exemption orders</sup> <sup>Special form of proxy</sup>

- (a) the form of proxy sent to a shareholder by a person soliciting proxies,
  - (i) shall indicate in bold-face type or other conspicuous manner whether or not the proxy is solicited by or on behalf of the management of the corporation, and
  - (ii) shall provide a specifically designated blank space for dating the form of proxy;
- (b) the form of proxy shall provide means whereby the person whose proxy is solicited is afforded an opportunity to specify that the shares registered in his name shall be voted by the nominee in favour of or against, in accordance with such person's choice, each matter or group of related matters identified therein or in the information circular as intended to be acted upon, other than the election of directors and the appointment of auditors, but a proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by such means if the form of proxy or the information circular states in bold-face type or other conspicuous manner how it is intended to vote the shares represented by the proxy in each such case;
- (c) a proxy may confer discretionary authority with respect to,
  - (i) amendments or variations to matters identified in the notice of meeting, or
  - (ii) other matters that may properly come before the meeting,

but only if,

- (iii) the person by whom or on whose behalf the solicitation is made is not aware a reasonable

time prior to the time the solicitation is made that any such amendments, variations or other matters are to be presented for action at the meeting, and

- (iv) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority;
- (d) no proxy shall confer authority,
  - (i) to vote for the election of any person as a director of the corporation unless a *bona fide* proposed nominee for such election is named in the information circular, or
  - (ii) to vote at any meeting other than the meeting specified in the notice of meeting or any adjournment thereof;
- (e) the information circular or form of proxy shall state that the shares represented by the proxy will be voted and that, where the person whose proxy is solicited specifies a choice with respect to any matter to be acted upon under clause *b*, the shares shall, subject to section 121, be voted in accordance with the specifications so made;
- (f) the information circular or form of proxy shall indicate in bold-face type or other conspicuous manner that the shareholder has the right to appoint a person to attend and act for him and on his behalf at the meeting other than the person, if any, designated in the form of proxy, and shall contain instructions as to the manner in which the shareholder may exercise such right; and
- (g) if the form of proxy contains a designation of a named person as nominee, means shall be provided whereby the shareholder may designate in a form of proxy some other person as his nominee for the purpose of subsection 1 of section 116. 1966, c. 28, s. 4, *part, amended*.

Where  
vote by  
ballot  
not  
required

**121.** If the votes represented at a meeting by proxies requiring that they be voted in respect of a particular matter or group of matters total to the knowledge of the chairman of that meeting, less than 5 per cent of all of the voting rights attaching to all of the shares entitled to be voted and be represented at the meeting, the chairman has the right not to conduct a

vote by way of ballot on any such matter or group of matters unless a poll is demanded at the meeting in which case the vote shall be by way of ballot. 1966 c. 28 s. 4 *part, amended*.

## DIRECTORS AND OFFICERS

### *Directors*

**122.**—(1) Every corporation shall have a board of directors howsoever designated. Board of directors

(2) The board of directors shall consist of a fixed number of directors, Composition

(a) in the case of a corporation that is not offering its securities to the public, of at least one; and

(b) in the case of a corporation that is offering its securities to the public, of not fewer than three, of whom at least two shall not be officers or employees of the corporation or of any affiliate of the corporation. R.S.O. 1960, c. 71, s. 296 (1, 2), *amended*.

**123.**—(1) Each of the persons named as first directors in the articles of a corporation is a director of the corporation until replaced by a person duly elected or appointed in his stead. First directors

(2) The first directors of a corporation have all the powers and duties and are subject to all the liabilities of directors. Idem R.S.O. 1960, c. 71, s. 297 (1, 2), *amended*.

**124.**—(1) A corporation may by special by-law increase or, subject to subsection 2 of section 122, decrease the number of its directors as set out in its articles. Change in number of directors

(2) The corporation shall file with the Minister a certified copy of the by-law within ten days after the by-law has been confirmed by the shareholders. Filing of by-law

(3) Failure to comply with subsection 2 does not affect the validity of the by-law. Validity R.S.O. 1960, c. 71, s. 298, *amended*.

**125.**—(1) No person under twenty-one years of age shall be a director of a corporation. Age of directors

(2) No undischarged bankrupt or mentally incompetent person shall be a director, and, if a director becomes a bankrupt or a mentally incompetent person, he thereupon ceases to be a director. Qualifications R.S.O. 1960, c. 71, s. 299 (4, 5), *amended*.

Consent

(3) A person who is elected or appointed a director is not a director unless,

- (a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as director;
- (b) where he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.

Idem

(4) For the purposes of subsection 3, a person who is elected or appointed as director and refuses under clause *a* of subsection 3 or fails to consent under clause *b* of subsection 3 shall be deemed not to have been elected or appointed as a director. *New.*

Election of directors

**126.**—(1) The directors shall be elected by the shareholders in general meeting, and the election shall be by ballot or in such other manner as the by-laws of the corporation prescribe.

Idem

(2) The election of directors shall take place yearly, or at such other interval not exceeding five years as is provided by the articles and all the directors then in office shall retire, but, if qualified, are eligible for re-election. R.S.O. 1960, c. 71, s. 300 (1, 2), *amended.*

Continuance in office

(3) If an election of directors is not held within the prescribed period, the directors continue in office until their successors are elected.

Rotation of directors

(4) The articles may provide for the election and retirement of directors in rotation, but in that case no director shall be elected for a term of more than five years and at least three directors shall retire from office in each year. R.S.O. 1960, c. 71, s. 300 (3, 4), *amended.*

Cumulative voting for directors

**127.** The articles or a special by-law of a corporation may provide that,

- (a) every shareholder entitled to vote at an election of directors has the right to cast thereat a number of votes equal to the number of votes attached to the shares held by him multiplied by the number of directors to be elected, and he may cast all such votes in favour of one candidate or distribute them among the candidates in such manner as he sees fit; and



- (b) where he has voted for more than one candidate without specifying the distribution of his votes among such candidates, he shall be deemed to have divided his votes equally among the candidates for whom he voted. R.S.O. 1960, c. 71, s. 64 (1), *amended*.

**128.**—(1) Subject to subsection 2, where there is a quorum <sup>Vacancies</sup> of directors in office and a vacancy occurs in the board, the directors remaining in office may appoint a qualified person to fill the vacancy for the remainder of the term. R.S.O. 1960, c. 71, s. 301 (1, 2), *amended*.

(2) Where part of the board of directors has been elected by the holders of the shares of a special class of shares as provided in clause *d* of subsection 1 of section 27, and a vacancy occurs in that part of the board, the remaining directors or director, if any, in that part of the board may appoint a qualified person to fill the vacancy for the remainder of the term, and, if there is no such remaining director, the holders of that class of shares at a general meeting thereof that may be called by any holder of shares of that class may elect a qualified person to fill the vacancy for the remainder of the term. *New*. <sup>Idem, where elected by class of shareholders</sup>

(3) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a general meeting of the shareholders to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any shareholder. R.S.O. 1960, c. 71, s. 301 (3). <sup>Idem, where no quorum</sup>

**129.** Unless the articles or by-laws otherwise provide, a majority of the board of directors constitutes a quorum, but in no case shall a quorum be less than two-fifths of the board of directors or two directors, whichever is the greater. R.S.O. 1960, c. 71, s. 301 (1), *amended*. <sup>Quorum of directors</sup>

**130.**—(1) Subject to subsection 2, the meetings of the board of directors and the executive committee shall be held at the place where the head office of the corporation is located. <sup>Place of meetings</sup>

(2) Where the by-laws of the corporation so provide, the meetings of the board of directors and of the executive committee may be held at any place within or outside Ontario. R.S.O. 1960, c. 71, s. 74 (1, 2), *amended*. <sup>Exception</sup>

**131.**—(1) In addition to any other provision in the articles or by-laws of a corporation for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of <sup>Calling meetings of directors</sup>

the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting.

Notice

(2) In the absence of any other provision in that behalf in the by-laws of the corporation, notice of the time and place for the holding of the meeting called under subsection 1 shall be given to every director of the corporation by sending the notice by prepaid mail ten days or more before the date of the meeting to his latest address as shown on the records of the corporation. *New.*

Duties

**132.**—(1) The board of directors shall manage or supervise the management of the affairs and business of the corporation.

Conduct of  
business

(2) Subject to section 133 and subsection 1 of section 23, no business of a corporation shall be transacted by its directors except at a meeting of directors at which a quorum of the board is present.

Idem

(3) Where there is a vacancy or vacancies in the board of directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office. R.S.O. 1960, c. 71, s. 296, *amended*.

Executive  
committee

**133.**—(1) Where the number of directors of a corporation is more than six, and if authorized by a special by-law, the directors may elect from among their number an executive committee consisting of not fewer than three and may delegate to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors.

Quorum

(2) An executive committee may fix its quorum, which shall be not less than a majority of its members. R.S.O. 1960, c. 71, s. 69 (1, 2), *amended*.

Disclosure  
by directors  
of interests  
in contracts

**134.**—(1) Every director of a corporation who has, directly or indirectly, any interest in any contract or transaction to which the corporation is or is to be a party, other than a contract or transaction limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the corporation and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase and sale of assets by or to the corporation or a subsidiary thereof, the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such information is within his knowledge or control.

(2) Subsection 1 does not require the disclosure of any interest in any contract or transaction unless the interest and the contract or transaction are both material.

(3) The declaration required by this section shall be made at the meeting of the directors at which the contract or transaction is first considered or, if the director is not at the date of the meeting interested in the contract or transaction, at the next meeting of the directors held after he becomes so interested, and, where the director becomes interested in a contract or transaction after it is entered into, the declaration shall be made at the first meeting of the directors held after he becomes so interested.

(4) If a director has made a declaration and disclosure of his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the corporation, the director, if he was acting honestly and in good faith at the time the contract or transaction was entered into is not by reason only of his holding the office of director accountable to the corporation or to its shareholders for any profit or gain realized from the contract or transaction, and the contract or transaction, if it was in the best interest of the corporation, is not voidable by reason only of the director's interest therein.

(5) Notwithstanding anything in this section, a director, if he was acting honestly and in good faith, is not accountable to the corporation or to its shareholders for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction, if it was in the best interests of the corporation at the time it was entered into is not by reason only of the director's interest therein voidable,

(a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for that purpose; and

(b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting or in the information circular required by section 118. R.S.O. 1960, c. 71, s. 70, *amended*.

**135.**—(1) Where any shares of a corporation are acquired by it by redemption, purchase or acceptance for surrender in contravention of this Act or the articles, the directors who voted in favour of or consented to the resolution authorizing

the redemption, purchase or acceptance for surrender are jointly and severally liable to the corporation to the extent of the amount paid for the acquisition of the shares.

Application  
to court

(2) Where any shares of a corporation are acquired by it by redemption, purchase or surrender in contravention of this Act or the articles,

(a) any shareholder of the corporation; or

(b) where the acquisition is in contravention of subsection 1 of section 38, subsection 3 of section 39 or section 100, any creditor of the corporation who was a creditor at the time of the acquisition,

may apply to the court within two years of the acquisition, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any shareholder whose shares were acquired liable to the corporation, jointly and severally with the directors, to the extent of the amount paid to him for his shares. *New.*

Liability  
of directors  
re dividends

**136.** Where any dividend is declared and paid in contravention of section 153 or 154,

(a) the directors who voted in favour of or consented to the resolution authorizing the declaration of the dividend are jointly and severally liable to the corporation to the extent of the amount of the dividend so declared and paid or such part thereof as renders the corporation insolvent or diminishes its capital; and

(b) any shareholder of the corporation or any creditor of the corporation who was a creditor at the time of the declaration of the dividend may apply to the court within two years of the declaration, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any shareholder to whom the dividend is paid jointly and severally liable with the directors to the extent of the amount of the dividend paid to him. R.S.O. 1960, c. 71, s. 61 (3), *part, amended.*

Consent of  
director at  
meeting

**137.—**(1) A director who was present at a meeting of the board of directors or an executive committee thereof when,

(a) the redemption, purchase or acceptance for surrender of shares of the corporation is authorized;



- (b) the declaration and payment of a dividend is authorized; or
- (c) a loan or guarantee mentioned in section 146 is authorized,

shall be deemed to have consented thereto unless,

- (d) his dissent is entered in the minutes of the meeting;
- (e) he files his written dissent with the person acting as secretary of the meeting before its adjournment; or
- (f) he delivers or sends his dissent by registered mail to the corporation immediately after the adjournment of the meeting,

and within seven days after complying with clause *d*, *e* or *f* he sends a copy of his dissent by registered mail to the Minister.

(2) A director who voted in favour of a matter referred to <sup>Idem</sup> in subsection 1 is not entitled to dissent under subsection 1.

(3) A director who was not present at a meeting of the board of directors or any executive committee thereof when, <sup>Consent of director not at meeting</sup>

- (a) the redemption, purchase or acceptance for surrender of shares of the corporation is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) a loan or guarantee mentioned in section 146 is authorized,

shall be deemed to have consented thereto unless,

- (d) he delivers or sends to the corporation by registered mail his dissent; or
- (e) he causes his dissent to be filed with the minutes of the meeting,

within seven days after he becomes aware of the authorization referred to in clause *a*, *b* or *c* and unless, within seven days after complying with clause *d* or *e*, he sends a copy of his dissent by registered mail to the Minister. *New.*

**138.**—(1) A director is not liable under section 135, 136 <sup>Exception to liability</sup> or 146 if, in the circumstances, he discharged his duty to the corporation in accordance with section 144.

Liability  
not  
excluded

(2) The liability imposed by this Act upon a director is in addition to any other liability that is by law imposed upon him. *New.*

Liability of  
directors  
for wages  
R.S.O. 1960,  
c. 230

**139.**—(1) The directors of a corporation are jointly and severally liable to the employees of the corporation to whom *The Master and Servant Act* applies for all debts that become due while they are directors for services performed for the corporation, not exceeding six months wages, and for the vacation pay accrued for not more than twelve months under *The Employment Standards Act, 1968* and the regulations thereunder or under any collective agreement made by the corporation.

1968, c. 35

Limitation  
of liability

(2) A director is liable under subsection 1,

(a) only if,

(i) the corporation has been sued for the debt within six months after it has become due and execution against the corporation has been returned unsatisfied in whole or in part, or

(ii) the corporation has within that period gone into liquidation or has been ordered to be wound up or has made an authorized assignment under the *Bankruptcy Act* (Canada), or a receiving order under the *Bankruptcy Act* (Canada) has been made against it and, in any such case, the claim for the debt has been proved; and

R.S.C. 1952,  
c. 14

(b) he is sued for the debt while he is a director or within two years after he ceases to be a director.

Idem

(3) After execution has been so returned against the corporation, the amount recoverable against the director is the amount remaining unsatisfied on the execution.

Rights of  
director  
who pays  
the debt

(4) If the claim for the debt has been proved in liquidation or winding-up proceedings or under the *Bankruptcy Act* (Canada), a director who pays the debt is entitled to any preference that the creditor paid would have been entitled to or, if a judgment has been recovered for the debt, the director is entitled to an assignment of the judgment. R.S.O. 1960, c. 71, s. 73 (1-4), *amended.*

Removal  
of directors

**140.** The shareholders may, by resolution passed by a majority of the votes cast at a general meeting duly called for that purpose, remove any director before the expiration of

his term of office and may, by a majority of the votes cast at the meeting, elect any person in his stead for the remainder of his term, but, where the directors have been elected by the method of voting provided by section 127, no director shall be removed from office where the votes cast against the resolution for his removal would, if cumulatively voted at an election of the full board of directors, be sufficient to elect one or more directors. R.S.O. 1960, c. 71, s. 66 (1), *amended*.

### *Officers*

**141.**—(1) A corporation shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors. Officers

(2) In the absence of other provisions in that behalf in the articles or by-laws, the directors, Election and appointment

- (a) shall elect the president from among themselves;
- (b) shall appoint or elect the secretary; and
- (c) may appoint or elect one or more vice-presidents or other officers. R.S.O. 1960, c. 71, s. 302 (1, 2), *amended*.

**142.** A corporation may by special by-law, Chairman of the board

- (a) provide for the election or appointment by the directors from among themselves of a chairman of the board;
- (b) define the duties of the chairman;
- (c) assign to the chairman all or any of the duties of the president or of any other officer of the corporation,

and, if the by-law assigns to the chairman any of the duties of the president, it shall also fix and prescribe the duties of the president. R.S.O. 1960, c. 71, s. 303, *amended*.

**143.** Unless the articles or by-laws otherwise provide, no person shall be the president or chairman of the board of a corporation unless he is a director of the corporation but no other officer need be a director. R.S.O. 1960, c. 71, s. 304 (1), *amended*. Qualifications of chairman and president

### *General*

**144.** Every director and officer of a corporation shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the corporation, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. *New*. Standards of care, etc., of directors

Validity of  
acts of  
directors  
and officers

**145.** An act done by a director or by an officer is not invalid by reason only of any defect that is thereafter discovered in his appointment, election or qualification. R.S.O. 1960, c. 71, s. 305, *amended*.

Liability  
of directors  
and officers

**146.** Those directors and officers of a corporation who authorize or consent to a loan in contravention of section 17 are, until repayment of the loan, jointly and severally liable to the corporation and to its creditors for the debts of the corporation then existing or thereafter contracted to the amount of the loan with interest at the rate of 6 per cent a year. R.S.O. 1960, c. 71, s. 23 (4), *amended*.

Indemnifi-  
cation of  
directors

**147.**—(1) Subject to subsection 2, the by-laws of a corporation may provide that every director and officer of the corporation and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against,

- (a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and
- (b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the corporation. R.S.O. 1960, c. 71, s. 72, *amended*.

*Idem*

(2) No director or officer of a corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant. *New*.

Insurance

(3) A corporation may purchase and maintain insurance for the benefit of a director or officer thereof, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of a contravention of section 144. *New*.

#### INSIDERS

Insiders  
to report  
holdings  
to O.S.C.

**148.**—(1) A person who becomes an insider of a corporation shall, within ten days after the end of the month in which he becomes an insider, file with the Commission a report, as



of the day on which he became an insider, of his direct or indirect beneficial ownership of or control or direction over securities of the corporation.

(2) If a person who is an insider of a corporation but has <sup>Idem</sup> no direct or indirect beneficial ownership of or control or direction over securities of the corporation acquires direct or indirect beneficial ownership of or control or direction over any such securities, he shall, within ten days after the end of the month in which he acquired such direct or indirect beneficial ownership or such control or direction, file with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of or control or direction over securities of the corporation.

(3) A person who has filed or is required to file a report <sup>Subsequent reports of changes</sup> under subsection 1 or 2 and whose direct or indirect beneficial ownership of or control or direction over securities of the corporation changes from that shown or required to be shown in such report or in the last report filed by him under this section shall, within ten days following the end of the month in which such change takes place, provided that he was an insider of the corporation at any time during such month, file with the Commission a report of his direct or indirect beneficial ownership of or control or direction over securities of the corporation at the end of such month and the change or changes therein that occurred during the month and giving such details of each transaction as may be required by the regulations. 1966, c. 28, s. 3, *part, amended*.

**149.**—(1) All reports filed with the Commission under section 148 shall, upon payment of the prescribed fee, be open <sup>Reports may be inspected</sup> to public inspection at the offices of the Commission during normal business hours of the Commission, and any person may make extracts from such reports.

(2) The Commission shall summarize in or as part of a <sup>Publication of information contained in reports</sup> monthly periodical for distribution to the public on payment of the prescribed fee therefor the information contained in the reports so filed. 1966, c. 28, s. 3, *part*.

**150.**—(1) Every insider of a corporation or associate or affiliate of such insider who, in connection with a transaction relating to the securities of the corporation, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person for any direct loss suffered by such person as a result of the transaction, unless the information <sup>Liability of insiders</sup>

was known or ought reasonably to have been known to such person at the time of the transaction, and is also accountable to the corporation for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of the transaction.

Limitation  
period

(2) An action to enforce any right created by subsection 1 may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action. 1966, c. 28, s. 3, *part.*

Order to  
commence  
action

**151.**—(1) Upon application by any person who was at the time of a transaction referred to in subsection 1 of section 150 or is at the time of the application an owner of securities of the corporation, the court may, if satisfied that,

(a) such person has reasonable grounds for believing that the corporation has a cause of action under section 150; and

(b) either,

(i) the corporation has refused or failed to commence an action under section 150 within sixty days after receipt of a written request from such person so to do, or

(ii) the corporation has failed to prosecute diligently an action commenced by it under section 150,

make an order, upon such terms as to security for costs and otherwise as to the court seems fit, requiring the Commission to commence or continue an action in the name of and on behalf of the corporation to enforce the liability created by section 150.

Notice to  
corporation  
and O.S.C.

(2) The applicant under subsection 1 shall give to the corporation and the Commission notice of his application, and the corporation and the Commission have the right to appear and be heard thereon.

Order to  
require  
corporation  
to  
co-operate

(3) Every order made under subsection 1 shall provide that the corporation shall co-operate fully with the Commission in the institution and prosecution of the action and shall make available to the Commission all records, documents and other material or information known to the corporation or reasonably ascertainable by the corporation relevant to the action. 1966, c. 28, s. 3, *part.*

**152.** Upon the application of any interested person, the Commission may, if satisfied upon the circumstances of the particular case that there is adequate justification for so doing, make an order upon such terms and conditions as seem to the Commission to be expedient exempting in whole or in part any person from the requirements of section 148. *New.* Exception

#### DIVIDENDS

**153.**—(1) Subject to the articles of the corporation, the directors may declare and the corporation may pay dividends on its issued shares. Power to declare dividends

(2) A dividend may be paid in cash or in property not exceeding in value the amount of the dividend. Manner of payment

(3) The directors shall not declare and the corporation shall not pay any dividend when the corporation is insolvent, or any dividend the payment of which renders the corporation insolvent or that diminishes its capital. R.S.O. 1960, c. 71, s. 61 (1-3), *amended.* When dividend not to be declared

**154.**—(1) Notwithstanding anything in this Act, a corporation, Corporations with wasting assets

(a) that for the time being carries on as its principal business the business of operating a producing mining, gas or oil property owned and controlled by it; or

(b) at least 75 per cent of the assets of which are of a wasting character; or

(c) incorporated for the object of acquiring the assets or a substantial part of the assets of a body corporate and administering such assets for the purpose of converting them into cash and distributing the cash among the shareholders of the corporation,

may declare and pay dividends out of the funds derived from the operations of the corporation.

(2) The powers conferred by subsection 1 may be exercised notwithstanding that the value of the net assets of the corporation may be thereby reduced to less than its issued capital if the payment of the dividends does not reduce the value of its remaining assets to an amount insufficient to meet all the liabilities of the corporation exclusive of its issued capital. Extent of impairment of capital

(3) The powers conferred by subsection 1 may be exercised only under the authority of a special by-law. Special by-law

Idem

(4) Where dividends have been paid by a corporation in any of the cases mentioned in subsection 1 without the authority of a by-law, the payment thereof is nevertheless valid if a by-law adopting and approving the payment is passed and confirmed in the same manner as for a special by-law. R.S.O. 1960, c. 71, s. 61 (5-8), *amended*.

Stock dividends

**155.** For the amount of any dividend that the directors may declare payable in cash, they may declare a stock dividend and issue therefor shares of the corporation as fully paid. R.S.O. 1960, c. 71, s. 62, *amended*.

## RECORDS

Records

**156.**—(1) Where this Act requires a record to be kept by a corporation, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device.

Where not in bound book

(2) Where a record is not kept in a bound book, the corporation shall,

- (a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and
- (b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the record. R.S.O. 1960, c. 71, s. 1, cls. *a, h*, *amended*.

Admissibility of records in evidence

(3) The bound or looseleaf book or, where the record is not kept in a bound or looseleaf book, the information in the form in which it is made available under clause *b* of subsection 2 is admissible in evidence as *prima facie* proof, before and after dissolution of the corporation, of all facts stated therein. R.S.O. 1960, c. 71, s. 314, *amended*.

False information

(4) No person shall remove, withhold or destroy information required by this Act or the regulations to be recorded, or

- (a) record or assist in recording any information in a record; or
- (b) make information purporting to be accurate available in a form referred to in clause *b* of subsection 2,

knowing it to be untrue. R.S.O. 1960, c. 71, s. 316, *amended*.

Records

**157.** A corporation shall cause to be kept the following records:



1. A copy of the articles of the corporation.
2. All by-laws and resolutions, including special by-laws and special resolutions of the corporation.
3. A register of security holders in which is set out the names alphabetically arranged or alphabetically indexed in appropriate categories of,
  - i. all persons who are or have been within ten years registered as shareholders of the corporation and the address including the street and number, if any, of every such person while a holder, in which are set out also the number and class of shares held by such holder and, where the shares were issued before this Act comes into force and not fully paid, the amounts paid up and remaining unpaid on such shares,
  - ii. all persons who are or have been holders of debt obligations other than debt obligations in bearer form of the corporation and the address including the street and number, if any, of every such person while a holder in which are set out also the class or series and principal amount of the debt obligations held by such holder.
4. A register of directors in which are set out the names and residence addresses, including the street and number, if any, of all persons who are or have been directors of the corporation with the several dates on which each became or ceased to be a director.
5. Proper accounting records in which are set out all financial and other transactions of the corporation including, without limiting the generality of the foregoing, records of,
  - i. all sums of money received and disbursed by the corporation and the matters with respect to which receipt and disbursement took place,
  - ii. all sales and purchases of the corporation,
  - iii. the assets and liabilities of the corporation, and
  - iv. all other transactions affecting the financial position of the corporation.

6. The minutes of all proceedings at meetings of shareholders, directors and any executive committee. R.S.O. 1960, c. 71, ss. 312 (1), 313, 315, *amended*.

Register of transfers

**158.** Every corporation shall cause to be kept a register of transfers in which all transfers of securities issued by the corporation in registered form and the date and other particulars of each transfer shall be set out. R.S.O. 1960, c. 71, s. 40, *amended*.

Transfer agents

**159.** A corporation may appoint a transfer agent to keep the register of security holders and the register of transfers and may also appoint one or more branch transfer agents to keep branch registers of security holders and branch registers of transfers. R.S.O. 1960, c. 71, s. 41, *amended*.

Where registers to be kept

**160.—(1)** The register of security holders and the register of transfers shall be kept at the head office of the corporation or at such other office or place in Ontario as is appointed by resolution of the directors, and the branch register or registers of security holders and the branch register or registers of transfers may be kept at such office or offices of the corporation or other place or places, either in or outside Ontario, as are appointed by resolution of the directors.

Valid registration

(2) Registration of the transfer of a security of the corporation in the register of transfers or a branch register of transfers is a complete and valid registration for all purposes.

Entry in branch transfer register

(3) In each branch register of transfers shall be recorded only the particulars of the transfers of securities registered in that branch register of transfers.

Entry in register of transfers

(4) Particulars of every transfer of securities registered in every branch register of transfers shall be recorded in the register of transfers. R.S.O. 1960, c. 71, s. 42, *amended*.

Records open to examination by directors

**161.—(1)** The records mentioned in sections 157 and 158 shall, during the normal business hours of the corporation, be open to examination by any director and shall, except as provided in section 160 and in subsections 2 and 3 of this section, be kept at the head office of the corporation.

Records of account at branch

(2) A corporation may keep at any place where it carries on business such parts of the accounting records as relate to the operations, business and assets and liabilities of the corporation carried on, supervised or accounted for at such place, but there shall be kept at the head office of the corporation or such other place as is authorized under subsection 3 such records as will enable the directors to ascertain quarterly with reasonable accuracy the financial position of the corporation.

## (3) Where a corporation,

Order for  
removal of  
records

- (a) shows, to the satisfaction of the Minister, the necessity of keeping all or any of the records mentioned in subsection 1 at a place other than the head office of the corporation; and
- (b) gives to the Minister adequate assurance, by surety bond or otherwise, that such records will be open for examination,
  - (i) at the head office or some other place in Ontario designated by the Minister, and
  - (ii) by any person who is entitled to examine them and who has applied to the Minister for such an examination,

the Minister may, by order and upon such terms as he thinks fit, permit the corporation to keep such of them at such place or places, other than the head office, as he thinks fit. R.S.O. 1960, c. 71, s. 317 (1-3), *amended*.

(4) The Minister may by order upon such terms as he sees fit rescind any order made under subsection 3 or any order made by the Lieutenant Governor in Council under a predecessor of that subsection. R.S.O. 1960, c. 71, s. 317 (5), *amended*.

Rescission  
of orders  
made under  
subs. 3

**162.**—(1) Subject to section 163, the records of a corporation mentioned in section 157 or 158, other than accounting records, resolutions of directors and the minutes of proceedings at meetings of directors and of executive committees, shall, during the normal business hours of the corporation and at the place or places where they are kept, be open to examination by the shareholders and creditors or their agents or personal representatives, and any of them may make extracts therefrom.

Examination  
of records  
by share-  
holders  
and  
creditors

(2) No person shall refuse to permit a person entitled thereto to inspect such records or to make extracts therefrom. R.S.O. 1960, c. 71, s. 318, *amended*.

Idem

**163.**—(1) A shareholder or creditor or the agent or personal representative of any of them shall not make or cause to be made a list of all or any of the security holders of the corporation unless he has filed with the corporation or its agent his affidavit in the following form, and, where the security holder or creditor is a body corporate, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the body corporate:

List of  
security  
holders

## Form of Affidavit

Province of Ontario } In the matter of  
County of } (*Insert name of corporation*)

I, ....., of the ..... of .....,  
in the ..... of .....,  
make oath and say:

1. I am a shareholder (*or creditor*) of the above-named corporation.

(*Where the shareholder or creditor is a body corporate, indicate office and authority of deponent in paragraph 1.*)

2. I am applying to make a list of the shareholders (debt obligation holders) of the above-named corporation.

3. I require the list of shareholders (debt obligation holders) only for purposes connected with the above-named corporation.

4. The list of shareholders (debt obligation holders) and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

Use of  
list

(2) No person, other than the corporation or its agent, shall use a list of all or any of the security holders of a corporation obtained under this section,

(a) for the purpose of delivering or sending to all or any of the security holders advertising or other printed matter relating to securities, other than the securities of the corporation; or

(b) for any purpose not connected with the corporation.

Purposes  
connected  
with the  
corporation  
defined

(3) Purposes connected with the corporation include any effort to influence the voting of shareholders or debt obligation holders at any meeting thereof and include the acquisition or offering of shares to acquire control or to effect an amalgamation or reorganization. R.S.O. 1960, c. 71, s. 319 (1-3), *amended*.

Where  
list of  
shareholders  
to be  
furnished

**164.**—(1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection 2, may require a corporation, other than a corporation that is not offering its securities to the public, or its transfer agent to furnish within ten days from the filing of the affidavit a list setting out the names alphabetically arranged of all persons who are shareholders of the corporation, the number of shares owned by each such person and the address of each such person as shown on the records of the corporation made up to a date not more than ten days before the date of filing the affidavit.



(2) The affidavit referred to in subsection 1 shall be made <sup>Form of affidavit</sup> by the applicant and shall be in the following form:

Form of Affidavit

Province of Ontario } In the matter of  
County of } *(Insert name of corporation)*

I, ..... of the ..... of .....  
in the ..... of .....  
make oath and say:

*(Where the applicant is a body corporate, indicate office and authority of deponent.)*

1. I hereby apply for a list of the shareholders of the above-named corporation.

2. I require the list of shareholders only for purposes connected with the above-named corporation.

3. The list of shareholders and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

(3) Where the applicant is a body corporate, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the body corporate. <sup>Idem, where applicant a body corporate</sup>

(4) No person shall use a list of all or any of the shareholders of a corporation obtained under this section, <sup>Use of list</sup>

(a) for the purpose of delivering or sending to all or any of the shareholders advertising or other printed matter relating to securities other than the securities of the corporation; or

(b) for any purpose not connected with the corporation.

(5) Every corporation or transfer agent shall furnish a list in accordance with subsection 1 when so required. <sup>Furnishing list</sup>

(6) Purposes connected with the corporation include any effort to influence the voting of shareholders at any meeting thereof, any offer to acquire shares in the corporation or any effort to effect an amalgamation or reorganization. 1966, c. 28, s. 17, *part, amended*. <sup>Purposes connected with corporation defined</sup>

**165.** No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the security holders of a corporation. 1966, c. 28, s. 17, *part, amended*. <sup>Trafficking in lists</sup>

Power of  
court to  
correct

**166.**—(1) Where the name of a person is, without sufficient cause, entered in or omitted from the records of a corporation other than accounting records, or if default is made or unnecessary delay takes place in entering therein the fact of any person having ceased to be a security holder of the corporation, the person or security holder aggrieved, or any security holder of the corporation, or the corporation itself, may apply to the court for an order that the records be rectified, and the court may dismiss such application or make an order for the rectification of the records and may direct the corporation to compensate the party aggrieved for any damage he has sustained.

Decision  
as to title

(2) The court may, in any proceeding under this section, decide any question relating to the entitlement of a person who is a party to the proceeding to have his name entered in or omitted from such records whether the question arises between two or more security holders or alleged security holders, or between any security holders or alleged security holders and the corporation.

Trial  
of issue

(3) The court may direct an issue to be tried. R.S.O. 1960, c. 71, s. 320 (1-3), *amended*.

Jurisdiction  
of courts  
not  
affected

(4) This section does not deprive any court of any jurisdiction it otherwise has. R.S.O. 1960, c. 71, s. 320 (5).

#### AUDITORS AND FINANCIAL STATEMENTS

Exemption  
from  
audit  
provisions

**167.**—(1) Subject to subsection 2, where in a financial year all the shareholders of a corporation that,

- (a) is not offering its securities to the public;
- (b) has five or fewer shareholders; and
- (c) has assets not exceeding \$500,000 and sales and gross operating revenues not exceeding \$1,000,000, as shown on the financial statement of the corporation for the preceding year,

consent in writing, the corporation is exempt from sections 168, and 169, subsections 1 to 4 of section 170 and section 171 in respect of the year in which the consent is given.

Subsidiary  
corporations

(2) Subsection 1 does not apply to a subsidiary corporation unless its holding corporation is exempted under subsection 1 at the time the consent of the shareholders is given. *New.*

**168.**—(1) The shareholders of a corporation at their first <sup>Auditors</sup> general meeting shall appoint one or more auditors to hold office until the close of the first annual meeting and, if the shareholders fail to do so, the directors shall forthwith make such appointment or appointments.

(2) The shareholders shall at each annual meeting appoint <sup>Idem</sup> one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

(3) The directors may fill any casual vacancy in the office <sup>Casual vacancy</sup> of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

(4) The shareholders may, by resolution passed by a majority of the votes cast at a general meeting duly called for the purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term. R.S.O. 1960, c. 71, s. 80 (1-4), *amended*. <sup>Removal of auditor</sup>

(5) Before calling a general meeting for the purpose specified in subsection 4, the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor, <sup>Notice to auditor</sup>

(a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

(6) The auditor has the right to make to the corporation, <sup>Right of auditor to make representations</sup> three days or more before the mailing of the notice of the meeting, representations in writing concerning his proposed removal as auditor, and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting. *New*.

(7) The remuneration of an auditor appointed by the shareholders shall be fixed by the shareholders, or by the directors if they are authorized so to do by the shareholders, and the remuneration of an auditor appointed by the directors shall be fixed by the directors. <sup>Remuneration</sup>

Appointment by court

(8) If for any reason no auditor is appointed, the court may, on the application of a shareholder, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the corporation for his or their services.

Notice of appointment

(9) The corporation shall give notice in writing to an auditor of his appointment forthwith after the appointment is made. R.S.O. 1960, c. 71, s. 80 (5-7), *amended*.

Notice to auditor of proposal to appoint another

**169.**—(1) If, in the information circular required by subsection 1 of section 118, reference is made to action proposed to be taken at an annual meeting of shareholders with respect to the appointment of an auditor other than the incumbent auditor, the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the incumbent auditor written notice of management's intention not to recommend his re-appointment at the annual meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed.

Right of incumbent auditor to make representations

(2) The incumbent auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing concerning the proposal not to re-appoint him as auditor, and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting. *New*.

Persons disqualified as auditors

**170.**—(1) No person shall be appointed or act as auditor of a corporation who is a director, officer or employee of the corporation or of an affiliate of the corporation or who is a partner, employer or employee of any such director, officer or employee or who is a related person to any director or officer of the corporation or of an affiliate of the corporation. R.S.O. 1960, c. 71, s. 81 (1), *amended*.

Idem

(2) No person shall be appointed or act as auditor of a corporation if he or any partner or employer of or related person to him beneficially owns, directly or indirectly, any securities of the corporation or of a subsidiary thereof or, if the corporation is a subsidiary, any securities of its holding corporation.

Where subs. 2 does not apply

(3) Subsection 2 does not apply to a person, partner, employer or related person, as the case may be, if the person, partner, employer or related person is not empowered to decide whether securities of the corporation or its holding corporation, as the case may be, are to be beneficially owned, directly or indirectly, by him, or if he is not entitled to vote in respect thereof.



(4) Where, on the date this section comes into force, an <sup>Idem</sup> auditor or his partner, employer or related person owns securities as set out in subsection 2, notwithstanding subsection 2, he may for a period of two years from the date this section comes into force continue to act as auditor if he discloses in the report required under subsection 2 of section 171 that he or his partner, employer or related person so owns such securities but, at the expiration of such period, he shall cease to act as auditor unless he or his partner, employer or related person, as the case may be, has disposed of such securities.

(5) No person shall be appointed a receiver or a receiver <sup>Auditors not to be appointed receivers, etc.</sup> and manager or liquidator of any corporation of which he or any partner or employer of or a related person to him is the auditor or has been auditor within the two years preceding his appointment as receiver or receiver and manager or liquidator.

(6) No person who is appointed a trustee of the estate of a <sup>Trustee in bankruptcy not to be auditor</sup> corporation under the *Bankruptcy Act* (Canada) or any partner or employer of or a related person to him shall be appointed or act as auditor of the corporation. *New.* <sup>R.S.C. 1952, c. 14</sup>

**171.**—(1) The auditor shall make such examination as will <sup>Annual audit</sup> enable him to report to the shareholders as required by subsection 2. R.S.O. 1960, c. 71, s. 82 (1).

(2) The auditor shall make a report to the shareholders on the financial statement, other than the part thereof that relates to the period referred to in subclause ii of clause *b* of subsection 1 of section 172, to be laid before the corporation at any annual meeting during his term of office and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. R.S.O. 1960, c. 71, s. 82 (2); 1964, c. 10, s. 2; 1966, c. 28, s. 6 (1), *amended.* <sup>Auditor's report</sup>

(3) Where the report under subsection 2 does not contain <sup>Idem</sup> the unqualified opinion required thereby the auditor shall state in his report the reasons therefor.

(4) Where facts come to the attention of the officers or directors which, if known prior to the date of the last annual general meeting of shareholders, would have required a material adjustment to the financial statement presented to such meetings, the officers or directors shall communicate such facts to the auditor who reported to the shareholders under this section and the directors shall forthwith amend the financial statement and send it to the auditor. <sup>Facts discovered after statement</sup>

Amendment  
of  
auditor's  
report

(5) On the receipt of facts furnished under subsection 4 or from any other source, the auditor shall, if in his opinion it is necessary, amend his report in respect of the financial statement in accordance with subsection 3 and the directors or, if they fail to do so within a reasonable time, the auditor shall mail such amended report to the shareholders. *New.*

Idem

(6) If the financial statement contains a statement of changes in net assets or a statement of source and application of funds, the auditor shall include in his report a statement whether in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein. 1966, c. 28, s. 6 (2), *amended.*

Idem

(7) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding corporation are included in the financial statement of the holding corporation, the report of the auditor of the holding corporation required by subsection 2 may refer to the reports of auditors of one or more of such subsidiaries, but such reference shall not derogate from the duty of the auditor of the holding corporation to comply with subsection 2. *New.*

Idem

(8) The auditor in his report shall make such statements as he considers necessary,

- (a) if the corporation's financial statement is not in agreement with its accounting records;
- (b) if the corporation's financial statement is not in accordance with the requirements of this Act;
- (c) if he has not received all the information and explanations that he has required; or
- (d) if proper accounting records have not been kept, so far as appears from his examination. R.S.O. 1960, c. 71, s. 82 (3).

Right of  
access, etc.

(9) The auditor of a corporation has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers and employees of the corporation such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. R.S.O. 1960, c. 71, s. 82 (4), *amended.*

Idem

(10) The auditor of a holding corporation has right of access at all times to all records, documents, accounts and vouchers of all subsidiaries of the corporation and is entitled to require from the directors, officers and employees of each such sub-

subsidiary such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. *New.*

(11) Where a subsidiary referred to in subsection 10 is a body corporate to which this Act does not apply, the holding corporation shall make available to its auditor the records, documents, accounts and vouchers of that subsidiary and shall require the directors, officers and employees of that subsidiary to make available to its auditor the information and explanation required by subsection 10. *Idem*

(12) The auditor of a corporation is entitled to attend any meeting of shareholders of the corporation and to receive all notices and other communications relating to any such meeting that a shareholder is entitled to receive, and to be heard at any such meeting that he attends on any part of the business of the meeting that concerns him as auditor. R.S.O. 1960, c. 71, s. 82 (5). *Auditor may attend shareholders' meetings*

(13) Any shareholder of a corporation, whether or not he is entitled to vote at meetings of shareholders, may, by notice in writing to the corporation given five days or more before any meeting of shareholders, require the attendance of the auditor at such meeting at the corporation's expense, and in such event the auditor shall attend the meeting. *Shareholder may require auditor's attendance at shareholders' meetings*

(14) At any meeting of shareholders the auditor, if present, shall answer inquiries directed to him concerning the bases upon which he formed the opinion stated in the report made under subsection 2. *New.* *Auditors must answer inquiries at shareholders' meetings*

**172.**—(1) The directors shall lay before each annual meeting of shareholders, *Information to be laid before annual meeting*

- (a) in the case of a corporation that is not offering its securities to the public, a financial statement for the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, made up of,
  - (i) a statement of profit and loss for such period
  - (ii) a statement of surplus for such period, and
  - (iii) a balance sheet as at the end of such period;
- (b) in the case of a corporation that is offering its securities to the public, a comparative financial statement relating separately to,



- (i) the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, and
- (ii) the period covered by the financial year next preceding such latest completed financial year, if any,

made up of,

- (iii) a statement of profit and loss for each period,
- (iv) a statement of surplus for each period,
- (v) in the case of a corporation that is a mutual fund company or investment company as defined in the regulations under *The Securities Act, 1966*, a statement of changes in net assets for each period,
- (vi) in the case of a corporation other than one referred to in subclause v, a statement of source and application of funds for each period, and
- (vii) a balance sheet as at the end of each period;

(c) the report of the auditor to the shareholders; and

- (d) such further information respecting the financial position of the corporation as the articles or by-laws of the corporation require. R.S.O. 1960, c. 71, s. 83 (1); 1966, c. 28, s. 7 (1), *amended*.

Designation  
of  
statements

(2) It is not necessary to designate the statements referred to in subsection 1 as the statement of profit and loss, statement of surplus, statement of changes in net assets, statement of source and application of funds and balance sheet. 1966, c. 28, s. 7 (2), *amended*.

Auditor's  
report  
to be read

(3) The report of the auditor to the shareholders shall be read at the annual meeting and shall be open to inspection at the meeting by any shareholder. R.S.O. 1960, c. 71, s. 83 (3).

Statement  
of profit  
and loss

**173.**—(1) The statement of profit and loss to be laid before an annual meeting shall be drawn up so as to present fairly the results of the operations of the corporation for the period covered by the statement and so as to distinguish severally at least,



- (a) in the case of a corporation that is offering its securities to the public, sales or gross operating revenue;
- (b) the operating profit or loss before including or providing for other items of income or expense that are required to be shown separately;
- (c) income from investments in subsidiaries whose financial statements are not consolidated with those of the corporation;
- (d) income from investments in affiliated corporations other than subsidiaries;
- (e) income from other investments;
- (f) non-recurring profits and losses of significant amount including profits or losses on the disposal of capital assets and other items of a special nature to the extent that they are not shown separately in the statement of earned surplus;
- (g) any provision for depreciation or for obsolescence or for depletion;
- (h) amounts written off for goodwill or amortization of any other intangible assets to the extent that they are not shown separately in the statement of earned surplus;
- (i) interest on indebtedness initially incurred for a term of more than one year, including amortization of debt discount or premium and expense; and
- (j) taxes on income imposed by any taxing authority,

and shall show the net profit or loss for the financial period. R.S.O. 1960, c. 71, s. 84 (1); 1966, c. 28, s. 8 (1, 2), *amended*.

(2) Notwithstanding subsection 1, items of the nature<sup>Notes</sup> described in clauses *g* and *h* of subsection 1 may be shown by way of note to the statement of profit and loss. R.S.O. 1960, c. 71, s. 84 (2); 1966, c. 28, s. 8 (3).

(3) A corporation that is offering its securities to the public may apply to the Commission for an order permitting sales or gross operating revenue referred to in clause *a* of subsection 1 of this section or subclause *i* of clause *c* of subsection 1 of section 185 to be omitted from the statement of profit and loss or the interim financial statement, as the case may be, and the Commission may, on such terms and conditions as it may impose, permit such omission where it is satisfied that in the circumstances the disclosure of such information would be unduly detrimental to the interests of the corporation. 1966, c. 28, s. 8 (4), *part, amended*.

Order for  
omission  
of sales  
or gross  
operating  
revenue

Mutual  
fund or  
investment  
companies  
1966, c. 142

(4) The statement of profit and loss of a mutual fund company or an investment company, as defined in the regulations under *The Securities Act, 1966*, shall also distinguish the average net investment income per share and an item of this nature may be shown by way of note to the statement of profit and loss. *New*.

Statement  
of surplus

**174.**—(1) The statement of surplus to be laid before an annual meeting shall be drawn up so as to present fairly the transactions reflected in the statement and shall show separately a statement of contributed surplus and a statement of earned surplus.

Contributed  
surplus

(2) The statement of contributed surplus shall be drawn up so as to include and distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period including,
  - i. the amount of surplus arising from the issue of shares or the reorganization of the corporation's issued capital, including *inter alia*,
    - a. the amount of premiums received on the issue of shares at a premium,
    - b. the amount of surplus realized on the purchase for cancellation of shares, and
  - ii. donations of cash or other property by shareholders.
3. The balance of such surplus at the end of the financial period.

Earned  
surplus

(3) The statement of earned surplus shall be drawn up so as to distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period and without restricting the generality of the foregoing at least the following:
  - i. The amount of the net profit or loss for the financial period.
  - ii. The amount of dividends declared on each class of shares.
  - iii. The amount transferred to or from reserves.

3. The balance of such surplus at the end of the financial period. R.S.O. 1960, c. 71, s. 85.

**175.**—(1) The statement of changes in net assets referred to in subclause *v* of clause *b* of subsection 1 of section 172 and clause *a* of subsection 1 of section 185 shall be drawn up so as to present fairly the information shown therein for the period and shall show separately at least,

Statement  
of changes  
in net assets

- (a) net assets at beginning of the period;
- (b) net investment income or loss;
- (c) aggregate proceeds on sale of portfolio securities;
- (d) aggregate cost of portfolio securities owned at beginning of the period;
- (e) aggregate cost of purchases of portfolio securities;
- (f) aggregate cost of portfolio securities owned at end of the period;
- (g) aggregate cost of portfolio securities sold;
- (h) realized profit or loss on securities sold;
- (i) distributions, showing separately the amount out of net investment income and out of realized profits;
- (j) proceeds from shares issued;
- (k) cost of shares redeemed;
- (l) net increase or decrease in unrealized appreciation or depreciation of portfolio securities;
- (m) net assets at end of the period;
- (n) net asset value per share at end of the period;
- (o) net asset value per share at beginning of the period;
- (p) distribution per share out of net investment income;
- (q) distribution per share out of realized profits.

(2) Notwithstanding subsection 1, items of the nature described in clauses *n*, *o*, *p* and *q* of subsection 1 may be shown by way of note to the statement of changes in net assets.

Note to  
statement

*New.*

Statement  
of source  
and  
application  
of funds

**176.** The statement of source and application of funds referred to in subclause vi of clause *b* of subsection 1 of section 172 and clause *b* of subsection 1 of section 185 shall be drawn up so as to present fairly the information shown therein for the period, and shall show separately at least,

(a) funds derived from,

- (i) current operations,
- (ii) sale of non-current assets, segregating investments, fixed assets and intangible assets,
- (iii) issue of debt obligations or other indebtedness maturing more than one year after issue, and
- (iv) issue of shares; and

(b) funds applied to,

- (i) purchase of non-current assets, segregating investments, fixed assets and intangible assets,
- (ii) redemption or other retirement of debt obligations or repayment of other indebtedness maturing more than one year after issue,
- (iii) redemption or other retirement of shares, and
- (iv) payment of dividends. 1966, c. 28, s. 9.

Balance  
sheet

**177.—**(1) The balance sheet to be laid before an annual meeting shall be drawn up so as to present fairly the financial position of the corporation as at the date to which it is made up and so as to distinguish severally at least the following:

1. Cash.
2. Debts owing to the corporation from its directors, officers or shareholders, except debts of reasonable amount arising in the ordinary course of its business that are not overdue having regard to its ordinary terms of credit.
3. Debts owing to the corporation, whether on account of a loan or otherwise, from subsidiaries whose financial statements are not consolidated with those of the corporation.
4. Debts owing to the corporation, whether on account of a loan or otherwise, from affiliated corporations other than subsidiaries.



5. Other debts owing to the corporation segregating those that arose otherwise than in the ordinary course of its business.
6. Inventory, stating the basis of valuation.
7. Shares, bonds, debentures and other investments owned by the corporation, except those referred to in paragraphs 8 and 9, stating their nature and the basis of their valuation and showing separately those that are marketable with a notation of their market value.
8. Securities of subsidiaries whose financial statements are not consolidated with those of the corporation, stating the basis of valuation.
9. Securities of affiliated corporations other than subsidiaries, stating the basis of valuation.
10. Lands, buildings, and plant and equipment, stating the basis of valuation, whether cost or otherwise, and, if valued on the basis of an appraisal, the date of appraisal, the name of the appraiser, the basis of the appraisal value and, if such appraisal took place within five years preceding the date to which the balance sheet is made up, the disposition in the accounts of the corporation of any amounts added to or deducted from such assets on appraisal and also the amount or amounts accumulated in respect of depreciation, obsolescence and depletion.
11. There shall be stated under separate headings, in so far as they are not written off,
  - i. expenditures on account of future business,
  - ii. any expense incurred in connection with any issue of shares,
  - iii. any expense incurred in connection with any issue of debt obligations, including any discount thereon, and
  - iv. any one or more of the following: goodwill, franchises, patents, copyrights, trade marks and other intangible assets and the amount if any, by which the value of any such assets has been written up within a period of five years preceding the date to which the balance sheet is made up.

12. The aggregate amount of any outstanding loans or guarantees under clauses *c* and *d* of subsection 2 of section 17.
13. Bank loans and overdrafts.
14. Debts owing by the corporation on loans from its directors, officers or shareholders.
15. Debts owing by the corporation to subsidiaries whose financial statements are not consolidated with those of the corporation, whether on account of a loan or otherwise.
16. Debts owing by the corporation to affiliated corporations other than subsidiaries whether on account of a loan or otherwise.
17. Other debts owing by the corporation, segregating those that arose otherwise than in the ordinary course of its business.
18. Liability for taxes, including the estimated liability for taxes in respect of the income of the period covered by the statement of profit and loss.
19. Dividends declared but not paid.
20. Deferred income.
21. Debt obligations issued by the corporation, stating the interest rate, the maturity date, the amount outstanding and the existence of sinking fund, redemption requirements and conversion rights, if any.
22. The authorized capital, giving the number of each class of shares and a brief description of each such class, and indicating therein any class of shares that is redeemable and the redemption price thereof.
23. The issued capital, giving the number of shares of each class issued and outstanding and the amount received therefor that is attributable to capital, and showing,
  - i. the number of shares of each class issued since the date of the last preceding balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration, and

ii. where any shares issued before this Act comes into force have not been fully paid,

- a. the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and
- b. the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid.

24. Contributed surplus.

25. Earned surplus.

26. Reserves, showing the amounts added thereto and the amounts deducted therefrom during the financial period.

27. The number of common shares purchased and the number of the common shares resold since the date of the last preceding balance sheet, giving the date of each such purchase and resale and the price at which each such purchase or resale was made. R.S.O. 1960, c. 71, s. 86 (1); 1966, c. 28, s. 10 (1-3), *amended*.

(2) Explanatory information or particulars of any item <sup>Notes</sup> mentioned in subsection 1 may be shown by way of note to the balance sheet. R.S.O. 1960, c. 71, s. 86 (2).

**178.**—(1) There shall be stated by way of note to the <sup>Notes to financial statement</sup> financial statement particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of any of the statements with any of those for the preceding period, and the effect, if material, of any such change upon the profit or loss for the period. R.S.O. 1960, c. 71, s. 87 (1).

(2) For the purpose of subsection 1, a change in accounting <sup>Change in accounting practice</sup> principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period, even though such change did not have a material effect upon the profit or loss for the period. 1962-63, c. 24, s. 3 (1).

(3) Where applicable, the following matters shall be referred <sup>Idem</sup> to in the financial statement or by way of note thereto:

1. The basis of conversion of amounts from currencies other than the currency in which the financial statement is expressed.
2. Foreign currency restrictions that affect the assets of the corporation.
3. Contractual obligations that will require abnormal expenditures in relation to the corporation's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts.
4. Material contractual obligations in respect of long-term leases, including, in the year in which the transaction was effected, the principal details of any sale and lease transaction.
5. Contingent liabilities, stating their nature and, where practicable, the approximate amounts involved.
6. Any liability secured otherwise than by operation of law on any asset of the corporation, stating the liability so secured.
7. Any default of the corporation in principal, interest, sinking fund or redemption provisions with respect to any issue of its debt obligations or credit agreements.
8. The gross amount of arrears of dividends on any class of shares and the date to which such dividends were last paid.
9. Where a corporation has contracted to issue shares or has given an option to purchase shares, the class and number of shares affected, the price and the date for issue of the shares or exercise of the option.
10. Where a corporation has contracted to purchase or resell common shares, the number of shares affected and price and date for the purchase or resale.
11. The aggregate direct remuneration paid or payable by the corporation and its subsidiaries whose financial statements are consolidated with those of the corporation to the directors and the senior officers and, as a separate amount, the aggregate direct remuneration paid or payable to such directors and senior officers by the subsidiaries of the corporation whose financial statements are not consolidated with those of the corporation.



12. In the case of a holding corporation, the aggregate of any shares in, and the aggregate of any debt obligations of, the holding corporation held by subsidiary corporations whose financial statements are not consolidated with those of the holding corporation.
13. The amount of any loans by the corporation, or by a subsidiary corporation, otherwise than in the ordinary course of business, during the corporation's financial period, to the directors or officers of the corporation.
14. Any restriction by the articles or by-laws of the corporation or by contract on the payment of dividends that is significant in the light of the corporation's financial position.
15. Any event or transaction, other than one in the normal course of business operations, between the date to which the financial statement is made up and the date of the auditor's report thereon that materially affects the financial statement. R.S.O. 1960, c. 71, s. 87 (2); 1962-63, c. 24, s. 3 (2); 1966, c. 28, s. 11 (1).
16. In the case of a corporation that is offering its securities to the public, the amount of any obligation for pension benefits arising from service before the date of the balance sheet, whether or not such obligation has been provided for in the accounts of the corporation, the manner in which the corporation proposes to satisfy such obligation and the basis on which it has charged or proposes to charge the related costs against operations. 1966, c. 28, s. 11 (2), *amended*.
17. Brief particulars of any action to which the corporation is a party commenced under section 99 during the period. *New*.

(4) A note to a financial statement is a part of it. R.S.O. <sup>Idem</sup> 1960, c. 71, s. 87 (3).

**179.**—(1) A corporation, in this section referred to as <sup>Consolidated</sup> "the holding corporation", may include in the financial state-<sup>financial</sup>ment to be submitted at an annual meeting the assets and <sup>statement</sup> liabilities and income and expense of any one or more of its subsidiaries, making due provision for minority interests, if any, and indicating in such financial statement that it is presented in consolidated form.

Non-  
consolidated  
financial  
statements

(2) Where the assets and liabilities and income and expense of any one or more subsidiaries of the holding corporation are not so included in the financial statement of the holding corporation,

(a) the financial statement of the holding corporation shall include a statement setting forth,

(i) the reason why the assets and liabilities and income and expense of such subsidiary or subsidiaries are not included in the financial statement of the holding corporation,

(ii) if there is only one such subsidiary, the amount of the holding corporation's proportion of the profit or loss of the subsidiary for the financial period coinciding with or ending in the financial period of the holding corporation, or, if there is more than one such subsidiary, the amount of the holding corporation's proportion of the aggregate profits less losses, or losses less profits, of all the subsidiaries for the respective financial periods coinciding with or ending in the financial period of the holding corporation,

(iii) the amount included as income from such subsidiary or subsidiaries in the statement of profit and loss of the holding corporation and the amount included therein as a provision for the loss or losses of the subsidiary or subsidiaries,

(iv) if there is only one such subsidiary, the amount of the holding corporation's proportion of the undistributed profits of the subsidiary earned since the acquisition of the shares of the subsidiary by the holding corporation to the extent that such amount has not been taken into the accounts of the holding corporation, or, if there is more than one such subsidiary, the amount of the holding corporation's proportion of the aggregate undistributed profits of all the subsidiaries earned since the acquisition of their shares by the holding corporation less its proportion of the losses, if any suffered by any subsidiary since the acquisition of its shares to the extent that such amount has not been taken into the accounts of the holding corporation,

- (v) any qualifications contained in the report of the auditor of any such subsidiary on its financial statement for the financial period ending as aforesaid, and any note or reference contained in that financial statement to call attention to a matter that, apart from the note or reference, would properly have been referred to in such a qualification, in so far as the matter that is the subject of the qualification or note is not provided for by the corporation's own financial statement and is material from the point of view of its shareholders;
- (b) if for any reason the directors of the holding corporation are unable to obtain such information as is necessary for the preparation of the statement that is to be included in the financial statement of the holding corporation, the directors who sign the financial statement shall so report in writing and their report shall be included in the financial statement in lieu of the statement;
- (c) if, in the opinion of the auditor of the holding corporation, adequate provision has not been made in the financial statement of the holding corporation for the holding corporation's proportion,
  - (i) where there is only one such subsidiary, of the loss of the subsidiary suffered since acquisition of its shares by the holding corporation, or
  - (ii) where there is more than one such subsidiary, of the aggregate losses suffered by the subsidiaries since acquisition of their shares by the holding corporation in excess of its proportion of the undistributed profits, if any, earned by any of the subsidiaries since such acquisition,

the auditor shall state in his report the additional amount that in his opinion is necessary to make full provision therefor. R.S.O. 1960, c. 71, s. 89, *amended*.

(3) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding corporation are included in the financial statement of the holding corporation, true copies of the latest financial statement of the subsidiary or subsidiaries shall be kept on hand by the holding corporation at its head office and shall be open to examination by the shareholders of the holding corporation

Copies of  
subsidiary  
statements

on request during the normal business hours of the holding corporation, but the directors of the holding corporation may by resolution refuse the right of such examination if the examination would be unduly detrimental to the interests of the corporation or the subsidiary or subsidiaries.

Setting  
aside  
resolution

(4) A resolution referred to in subsection 3 may, on the application of any shareholder,

- (a) be set aside by the Commission where the corporation is offering its securities to the public; or
- (b) be set aside by the court where the corporation is not offering its securities to the public. R.S.O. 1960, c. 71, s. 89 (2) (c), *amended*.

Insigni-  
ficant  
circum-  
stances

**180.** Notwithstanding sections 173 to 179, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance. R.S.O. 1960, c. 71, s. 88.

Reserve

**181.** In a financial statement, the term "reserve" shall be used to describe only,

- (a) amounts appropriated from earned surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred;
- (b) amounts appropriated from earned surplus pursuant to the articles or by-laws of the corporation for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred; and
- (c) amounts appropriated from earned surplus in accordance with the terms of a contract and that can be restored to the earned surplus when the conditions of the contract are fulfilled. R.S.O. 1960, c. 71, s. 91.

Audit  
committee

**182.—(1)** The directors of a corporation that is offering its securities to the public shall elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom a majority shall not be officers or employees of the corporation or an affiliate of the corporation, to hold office until the next annual meeting of the shareholders.



(2) The members of the audit committee shall elect a chair- <sup>Chairman</sup> man from among their number.

(3) The corporation shall submit the financial statement <sup>Review</sup> to the audit committee for its review and the financial statement shall thereafter be submitted to the board of directors.

(4) The auditor has the right to appear before and be heard <sup>Hearing of auditor</sup> at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

(5) Upon the request of the auditor, the chairman of the <sup>Idem</sup> audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or shareholders. *New.*

**183.** The financial statement shall be approved by the <sup>Approval by directors</sup> board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, or by the director where there is only one and the auditor's report shall be attached to or accompany the financial statement. R.S.O. 1960, c. 71, s. 92, *amended.*

**184.**—(1) A corporation that is offering its securities to <sup>Mailing of financial statement to shareholders</sup> the public shall, twenty-one days or more before the date of the annual meeting of shareholders, send by prepaid mail to each shareholder at his latest address as shown on the records of the corporation a copy of the financial statement and a copy of the auditor's report.

(2) The directors of such corporation shall send by prepaid <sup>Idem</sup> mail to each such shareholder a copy of any financial statement and auditor's report amended under subsections 4 and 5 of section 171.

(3) A shareholder of a corporation that is not offering its <sup>Financial statement, on demand</sup> securities to the public is entitled to be furnished by the corporation on demand with a copy of the documents mentioned in subsection 1. R.S.O. 1960, c. 71, s. 93, *amended.*

**185.**—(1) A corporation that is offering its securities to <sup>Comparative interim financial statement</sup> the public shall send to each shareholder a copy of a comparative interim financial statement for the six-month period that commenced on the date of incorporation or, if the corporation has completed a financial year, for the six-month period that commenced immediately after the end of the last completed financial year and for the comparable six-month period, if any, in the twelve months immediately preceding the commencement of the six-month period in respect of which such interim financial statement is issued, made up of,

1966, c. 142

- (a) in the case of a corporation that is a mutual fund company or investment company as defined in the regulations under *The Securities Act, 1966*, a statement of changes in net assets for each period that complies with section 175;
- (b) in the case of a corporation other than one referred to in clause *a*, a statement of source and application of funds for each period that complies with section 176; and
- (c) sufficient relevant financial information in summary form to present fairly the results of the operations of the corporation for each period, including,
  - (i) a statement of sales or gross operating revenue,
  - (ii) extraordinary items of income or expense,
  - (iii) net income before taxes on income imposed by any taxing authority,
  - (iv) taxes on income imposed by any taxing authority, and
  - (v) net profit or loss. 1966, c. 28, s. 13, *part, amended*.

Variation  
of period

(2) Upon the application of any interested person, the Commission may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order upon such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part a corporation from the requirements of subsection 1 or permitting the comparative interim financial statement of a corporation to be for such period other than six months that is specified in the order. *New*.

Idem

(3) There shall be stated by way of note to the interim financial statement required by subsection 1 particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of such statement with the statement for the preceding period or with the interim financial statement for a part of the preceding period, and the effect, if material, of any such change upon the profit or loss for the period covered by the interim financial statement.

Idem

(4) For the purpose of subsection 3, a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period or part thereof,

even though such change did not have a material effect upon the profit or loss for the period covered by the interim financial statement.

(5) The interim financial statement required by subsection 1 shall be sent by prepaid mail to each shareholder, within sixty days of the date to which it is made up, at his latest address as shown on the records of the corporation. 1966, c. 28, s. 13, *part, amended*. <sup>Idem</sup>

#### INVESTIGATIONS

**186.**—(1) Upon application by a shareholder of a corporation, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the corporation or the holders of its securities to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as to the court seems fit, appointing an inspector to investigate the affairs and management of the corporation or any affiliate of the corporation, or both, and to audit the accounts and records of the corporation or any affiliate thereof named in the order. R.S.O. 1960, c. 71, s. 321 (1), *amended*. <sup>Investigations and audits</sup>

(2) An order may be made under subsection 1 whether or not there has been disclosure to the shareholders of the corporation of information relating to any matter on the basis of which the order is made. *New*. <sup>Idem</sup>

(3) Every director, officer, agent, employee, banker and auditor of the corporation or of any affiliate of the corporation named in the order and every other person shall produce for the examination of the inspector all accounts and records of or relating to the corporation or affiliate in their custody or control. <sup>Production of accounts and records</sup>

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the corporation or affiliate in relation to its affairs, management, accounts and records. R.S.O. 1960, c. 71, s. 321 (7, 8), *amended*. <sup>Examination may be upon oath</sup>

(5) The court may, on the application of the inspector, on such terms and conditions as it sees fit, order any person not mentioned in subsection 4 to attend and be examined under oath before the inspector on any matter relevant to the investigation or audit. *New*. <sup>Court order for examination</sup>

(6) Every director, officer, agent or employee who refuses to produce any account or record referred to in subsection 3 and every banker or auditor who refuses to produce any account or record referred to in subsection 4 and every person examined under subsection 5 who refuses to answer any <sup>Offences</sup>



question related to the affairs and management of the corporation or any affiliate is guilty of an offence under section 259, in addition to any other liability to which he is subject. R.S.O. 1960, c. 71, s. 321 (9), *amended*.

Inspector's  
report

(7) The inspector shall make a report to the court and shall forward a copy of the report to the corporation and any affiliate of the corporation named in the order and to the person who made the application under subsection 1. *New*.

Corporation  
may appoint  
inspector  
for same  
purpose

**187.**—(1) A corporation may, by resolution passed at an annual meeting of shareholders or a general meeting of shareholders called for that purpose, appoint an inspector to investigate its affairs and management.

Powers  
and  
duties of  
inspector

(2) The inspector appointed under subsection 1 has the same powers and shall perform the same duties as an inspector appointed under section 186 and he shall make his report in such manner and to such persons as the corporation by resolution of the shareholders directs. R.S.O. 1960, c. 71, s. 321 (5, 6), *amended*.

Report  
admissible  
in  
proceedings

**188.** A copy of the report of the inspector authenticated by the court or in the case of an investigation under section 187 by the inspector is admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report. R.S.O. 1960, c. 71, s. 321 (10), *amended*.

## REORGANIZATION

### *Amendment of Articles*

Amend-  
ments

**189.**—(1) A corporation may, from time to time, amend its articles of incorporation to,

- (a) change its name;
- (b) extend, limit or otherwise vary its objects;
- (c) increase its authorized capital;
- (d) decrease,
  - (i) its authorized capital by cancelling shares, whether issued or unissued and whether with par value or without par value, or by reducing the par value of issued or unissued shares, or
  - (ii) its issued capital, if it has shares without par value,



and, where it has more capital than it requires, to authorize the repayment of capital to the shareholders to the extent that the issued capital is decreased in any way under this clause;

- (*e*) redivide its authorized capital into shares of lesser or greater par value;
- (*f*) consolidate or subdivide any of its shares without par value;
- (*g*) change any of its shares with par value into shares without par value;
- (*h*) change any of its shares without par value into shares with par value;
- (*i*) redesignate any class of shares;
- (*j*) reclassify any shares with or without par value into shares of a different class;
- (*k*) delete or vary any provision in its articles;
- (*l*) provide for any other matter or thing that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the corporation;
- (*m*) provide for restrictions on the transfer of the shares or any class thereof.

(2) An amendment under clauses *a* to *l* of subsection 1 shall be authorized by a special resolution. <sup>Authoriza-  
tion</sup>

(3) An amendment under clause *m* of subsection 1 shall be authorized by a resolution of the board of directors and confirmed in writing, <sup>Idem</sup>

- (*a*) by 100 per cent of the shareholders; or
- (*b*) by at least 95 per cent of the shareholders holding at least 95 per cent of the issued capital,

but, in the case of confirmation under clause *b*, the resolution is not effective until twenty-one days notice of the resolution has been given by sending the notice to each shareholder to his latest address as shown on the records of the corporation and only if at the expiration of the twenty-one days none of the shareholders has dissented in writing to the corporation.

(4) If the amendment is to delete or vary a preference, right, condition, restriction, limitation or prohibition attaching to a class of special shares or to create special shares <sup>Additional  
authoriza-  
tion for  
variation  
of rights of  
special  
shareholders</sup>

ranking in any respect in priority to or on a parity with an existing class of special shares, then, in addition to the confirmation required by subsection 2, the resolution is not effective until it has been confirmed,

- (a) by 100 per cent of the holders of the shares of such class or classes of shares in writing; or
- (b) in writing by at least 95 per cent of the holders of the shares of such class or classes of shares holding at least 95 per cent of the issued shares of such class or classes and after twenty-one days notice of the resolution and confirmation has been given by sending the notice to each of the holders of shares of such class or classes to his latest address as shown on the records of the corporation and only if at the expiration of twenty-one days none of the holders of such class or classes has dissented in writing to the corporation; or
- (c) if the articles so provide, by at least two-thirds of the votes cast at a meeting of the holders of such class or classes of shares duly called for that purpose or such greater proportion of the votes cast as the articles provide,

and by such additional authorization as the articles provide. R.S.O. 1960, c. 71, s. 33 (1-5), *amended*.

**Exception**

(5) Where an amendment to the articles that could be made under this section is made as part of an arrangement under sections 193, 194 and 195, the procedure provided for in those sections and not the procedure provided for in this section applies to the amendment.

**Special Act corporations excepted**

(6) This section does not apply to a corporation incorporated by special Act, except that a corporation incorporated by special Act may under this section amend its articles to change its name. R.S.O. 1960, c. 71, s. 33 (8, 9), *amended*.

**Articles of amendment**

**190.**—(1) For the purpose of bringing an amendment to the articles into effect, the corporation shall deliver to the Minister, within six months after the resolution has become effective, articles of amendment in duplicate, executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the articles of amendment, setting out,

- (a) the name of the corporation;

- (b) a certified copy of the resolution;
- (c) that the amendment has been duly authorized as required by subsections 2, 3 and 4 of section 189; and
- (d) the date of the confirmation of the resolution by the shareholders. R.R.O. 1960, Reg. 61, s. 35, *amended*.

(2) Where the articles of amendment are to change the name of the corporation, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the corporation is not insolvent. R.R.O. 1960, Reg. 60, s. 4 (3), *amended*. <sup>Change of name</sup>

(3) Where the articles of amendment are to decrease the authorized or issued capital, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the corporation is not insolvent and that the decrease will not render the corporation insolvent, and, if required by the Minister, by evidence that establishes to his satisfaction that no creditors object to the amendment. R.S.O. 1960, c. 71, s. 34. <sup>Decrease of capital</sup>

(4) Where the articles of amendment are to make any change in the authorized or issued capital, the articles of amendment shall, if required by the Minister, be accompanied by a *pro forma* balance sheet after giving effect to the proposed change. R.R.O. 1960, Reg. 60, s. 4 (1) (d), *amended*. <sup>Pro forma balance sheet</sup>

**191.**—(1) If the articles of amendment conform to law, the Minister shall, when all prescribed fees have been paid, <sup>Certificate of amendment</sup>

- (a) endorse on each duplicate of the articles of amendment the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of amendment to which he shall affix the other duplicate. *New*.

(2) The amendment becomes effective upon the date set forth in the certificate of amendment and the articles of incorporation are amended accordingly. R.S.O. 1960, c. 71, s. 4, *amended*. <sup>Effect of certificate</sup>

#### *Restatement of Articles*

**192.**—(1) A corporation may at any time restate its articles of incorporation as theretofore amended. <sup>Restatement of articles</sup>

Filing of  
restatement

(2) For the purposes of bringing the restated articles into effect, the corporation shall deliver to the Minister the restated articles in duplicate, executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the restated articles, setting out,

- (a) all the provisions that are then set out in the original articles of incorporation as theretofore amended; and
- (b) a statement that the restated articles correctly set out without change the corresponding provisions of the original articles as theretofore amended.

Restatement  
of  
certificate

(3) If the restated articles of incorporation conform to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the restated articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a restated certificate of incorporation to which he shall affix the other duplicate.

Effect of  
certificate

(4) The restated articles of incorporation become effective upon the date set forth in the restated certificate and supersede the original articles of incorporation and all amendments thereto. *New.*

### *Arrangements*

Interpre-  
tation

**193.**—(1) In this section and sections 194 and 195, "arrangement" includes a reorganization of the authorized capital of a corporation and also includes,

- (a) the consolidation of shares of different classes;
- (b) the reclassification of shares of one class into shares of another class;
- (c) the variation of the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares of any class; and
- (d) a reconstruction under which a corporation transfers or sells, or proposes to transfer or to sell, to another body corporate the whole or a substantial part of its



undertaking for a consideration consisting in whole or in part of securities of the other body corporate and under which it proposes to distribute a part of that consideration among its shareholders of any class, or to cease carrying on its undertaking or that part of its undertaking so transferred or sold or so proposed to be transferred or sold. R.S.O. 1960, c. 71, s. 95 (1).

(2) Subject to section 195, a corporation may make an <sup>Arrangement</sup> arrangement,

(a) that affects the rights of all its shareholders; or

(b) that affects the rights of only holders of a particular class of its shares. R.S.O. 1960, c. 71, s. 95 (2), *amended*.

(3) Where a corporation proposing an arrangement has <sup>Subsidiaries</sup> one or more subsidiaries, any one or more of the subsidiaries may join in the arrangement with the holding corporation in one scheme. *New*.

**194.**—(1) A corporation proposing an arrangement shall <sup>Scheme of arrangement</sup> prepare a scheme for the purpose, prescribing in detail what is to be done and the manner in which it is to be effected.

(2) The corporation shall submit the scheme to the share-<sup>Submission to share-holders</sup> holders, or to the class of them affected, as the case may be, at a meeting duly called by the corporation for the purpose of considering the scheme. *New*.

(3) Where a meeting of the shareholders or of any class or classes of shareholders is called under subsection 2, the notice <sup>Contents of notice calling meeting</sup> calling the meeting shall contain a statement explaining the effect of the arrangement and in particular stating any interest of the directors of the corporation, whether as directors or as shareholders of the corporation or otherwise, and the effect thereon of the arrangement in so far as it is different from the effect on the like interest of other persons. R.S.O. 1960, c. 71, s. 95 (3).

(4) If the shareholders of the corporation or of the class <sup>Approval by share-holders</sup> or classes affected, as the case may be, present in person or by proxy at the meeting, agree, by a vote of at least three-fourths of the shares of each class represented, to the arrangement either as proposed or as varied at the meeting, the scheme shall be deemed to have been adopted. R.S.O. 1960, c. 71, s. 95 (4), *amended*.

Approval  
by court

(5) Where the scheme is deemed to have been adopted, the corporation may apply to the court for an order approving the scheme.

Notice

(6) The corporation shall notify the Minister and unless the court otherwise directs, each of its dissentient shareholders, in such manner as the court may direct, of the time and place when the application for the approving order will be made.

Counsel

(7) The Minister may appoint counsel to assist the court upon the hearing of an application under this section. *New.*

Order

(8) The court shall hear and determine the matter and may approve the scheme as presented or may approve it, subject to compliance with such terms and conditions as it thinks fit, having regard to the rights and interests of the dissentient shareholders, or any of them. R.S.O. 1960, c. 71, s. 95 (4, 5), *amended.*

Filing of  
statement  
to amend  
articles

**195.—**(1) For the purpose of bringing a scheme into effect, the corporation shall, within six months of the approval of the scheme by the court, deliver to the Minister a statement in duplicate executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation, and verified by affidavit of one of the officers or directors signing the statement, setting out,

- (a) the name of the corporation;
- (b) a certified copy of the scheme;
- (c) a certified copy of the order of the court; and
- (d) that the terms and conditions, if any, to which the scheme is made subject by the order have been complied with.

Issuance of  
certificate  
of  
amendment

(2) If the statement conforms to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the statement the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of the filing to which he shall affix the other duplicate.

(3) Upon the issuance of the certificate of filing, the scheme becomes effective and constitutes an amendment to the articles. *New.* Effect of  
certificate  
of  
amendment

### *Amalgamations and Continuations*

**196.**—(1) Any two or more corporations, including holding or subsidiary corporations, may amalgamate and continue as one corporation. Amalgamation

(2) The corporations proposing to amalgamate shall enter into an agreement for the amalgamation, prescribing its terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect, and, in particular the agreement shall set out, Agreement

- (a) the name of the amalgamated corporation;
- (b) the period of duration of the amalgamated corporation if other than perpetual;
- (c) the place in Ontario where the head office of the amalgamated corporation is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district, and giving the street and number, if any;
- (d) the authorized capital of the amalgamated corporation, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share, or, where the shares are to be without par value, the consideration, if any, exceeding which each share may not be issued or the aggregate consideration, if any, exceeding which all the shares of each class may not be issued;
- (e) where there are to be special shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions applying to them or each class of them;
- (f) the restrictions, if any, to be placed on the transfer of its shares, or any class thereof;
- (g) the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the amalgamated corporation;

- (h) the time and manner of election of the subsequent directors of the amalgamated corporation;
- (i) whether or not the by-laws of the amalgamated corporation are to be those of one of the amalgamating corporations, and, if not, a copy of the proposed by-laws of the amalgamated corporation;
- (j) the manner in which the issued shares of each of the amalgamating corporations are to be converted into issued shares of the amalgamated corporation;
- (k) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation. R.S.O. 1960, c. 71, s. 96 (1, 2), *amended*.

Shares of  
amalgamating  
corporation  
held by  
another

(3) Where shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement shall provide for the cancellation of such shares upon the amalgamation becoming effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated corporation. *New*.

Approval of  
agreement

(4) An amalgamation agreement is not effective until approved by a special resolution of each of the amalgamating corporations. R.S.O. 1960, c. 71, s. 96 (3), *amended*.

Approval  
by special  
shareholders

(5) Where the carrying out of the amalgamation agreement would result in the deletion or variation of a preference, right, condition, restriction, limitation or prohibition attaching to a class of issued special shares of any of the amalgamating corporations or in the creation of special shares of the amalgamated corporation ranking in any respect in priority to, or on a parity with, any existing class of special shares of any of the amalgamating corporations, the agreement is not effective until it is approved in the manner provided by subsection 4 of section 189 in addition to the approval required by subsection 4. *New*.

Filing of  
articles of  
amalgamation

**197.**—(1) For the purpose of bringing an amalgamation into effect, the amalgamating corporations shall, within six months after the amalgamation agreement has become effective, deliver to the Minister articles of amalgamation in duplicate executed under the seal of each of the amalgamating corporations and signed by two officers, or by one director and one officer, of each of the amalgamating corporations and verified by affidavit of one of the officers or directors signing the articles of amalgamation for each amalgamating corporation, setting out,



- (a) the names of each of the amalgamating corporations;
- (b) a certified copy of the amalgamation agreement;
- (c) that the agreement has been duly approved as required by section 196; and
- (d) the dates on which the amalgamation agreement was approved by the shareholders of each of the amalgamating corporations.

(2) The articles of amalgamation shall be accompanied by evidence that establishes to the satisfaction of the Minister that each of the amalgamating corporations is not insolvent and, if required by the Minister, a *pro forma* balance sheet after giving effect to the proposed amalgamation. Evidence of solvency

(3) If the articles of amalgamation conform to law, the Minister shall, when all prescribed fees have been paid, Issuance of certificate of amalgamation

(a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;

(b) file one of the duplicates in his office; and

(c) issue to the amalgamated corporation or its agent a certificate of amalgamation to which he shall affix the other duplicate. *New.*

(4) Upon the date set forth in the certificate of amalgamation, Effect of certificate

(a) the amalgamation becomes effective and the amalgamating corporations are amalgamated and continue as one corporation under the terms and conditions prescribed in the amalgamation agreement;

(b) the amalgamated corporation possesses all the property, rights, privileges and franchises and is subject to all liabilities, contracts, disabilities and debts of each of the amalgamating corporations;

(c) the issued capital of the amalgamated corporation is, subject to the decrease provided for in subsection 3 of section 196, equal to the aggregate of the issued capital of each of the amalgamating corporations immediately before the amalgamation becomes effective; and

- (d) the articles of incorporation of each of the amalgamated corporations are amended to the extent necessary to give effect to the terms and conditions of the amalgamation agreement. R.S.O. 1960, c. 71, s. 96 (4), *amended*.

Certificate  
of con-  
tinuation

**198.**—(1) A corporation incorporated under the laws of any jurisdiction other than Ontario may, if it appears to the Minister to be thereunto authorized by the laws of the jurisdiction in which it was incorporated, apply to the Minister for a certificate continuing it as if it has been incorporated under this Act, and the Minister may issue the certificate of continuation on application supported by such material as appears satisfactory, and the certificate may be issued on such terms and subject to such limitations and conditions and contain such provisions as appear to the Minister to be fit and proper. R.S.O. 1960, c. 71, s. 323 (3), *amended*.

Effect of  
certificate  
of con-  
tinuation

(2) Upon the date set forth in a certificate of continuation issued under subsection 1, this Act applies to the corporation to the same extent as if it had been incorporated under this Act. *New*.

Transfer of  
Ontario  
corporations

**199.**—(1) A corporation incorporated under the laws of Ontario may, if authorized by a special resolution, by the Minister and by the laws of any other jurisdiction, apply to the proper officer of that other jurisdiction for an instrument of continuation continuing the corporation as if it had been incorporated under the laws of that other jurisdiction.

Notice

(2) The corporation shall file with the Minister a notice of the issue of the instrument of continuation, and on and after the date of the filing of the notice this Act ceases to apply to that corporation.

Application

(3) This section applies only in respect of a jurisdiction that has legislation in force that permits corporations incorporated under its laws to apply for an instrument of continuation under the laws of Ontario. 1961-62, c. 21, s. 4, *amended*.

Rights of  
creditors  
preserved

**200.** All rights of creditors against the property, rights and assets of a corporation amalgamated under section 196 or continued under section 198 and all liens upon its property, rights and assets are unimpaired by such amalgamation or continuation, and all debts, contracts, liabilities and duties of the corporation thenceforth attach to the amalgamated or continued corporation and may be enforced against it. R.S.O. 1960, c. 71, s. 324.

## DISSOLUTION

*Winding Up*

**201.** In sections 203 to 246, "contributory" means a person who is liable to contribute to the property of a corporation in the event of the corporation being wound up under this Act. R.S.O. 1960, c. 71, s. 241. Interpretation

*Voluntary Winding Up*

**202.** Sections 203 to 215 apply to corporations being wound up voluntarily. *New.* Application of ss. 203-215

**203.**—(1) Where the shareholders of a corporation by a majority of the votes cast at a general meeting duly called for that purpose, or by such greater proportion of the votes cast as the articles provide, pass a resolution requiring the corporation to be wound up, the corporation may be wound up voluntarily. Voluntary winding up

(2) At such meeting the shareholders shall appoint one or more persons, who may be directors, officers or employees of the corporation, as liquidator of the estate and effects of the corporation for the purpose of winding up its affairs and distributing its property, and may at that or any subsequent general meeting fix his remuneration and the costs, charges and expenses of the winding up. R.S.O. 1960, c. 71, s. 243, *amended.* Appointment of liquidator

(3) On the application of any shareholder or creditor of the corporation or of the liquidator, the court may review the remuneration of the liquidator and, whether or not the remuneration has been fixed by resolution, the court may fix and determine the remuneration at such amount as it thinks proper. *New.* Review of remuneration by court

(4) A corporation shall file notice of a resolution requiring the voluntary winding up of a corporation with the Minister within ten days after the resolution has been passed and shall publish the notice in *The Ontario Gazette* within twenty days after the resolution has been passed. R.S.O. 1960, c. 71, s. 244 (1), *amended.* Publication of notice of winding up

**204.** A corporation being wound up voluntarily may, in general meeting, by resolution, delegate to any committee of its shareholders, contributories or creditors, hereinafter referred to as inspectors, the power of appointing the liquidator and filling any vacancy in the office of liquidator, or may by a like resolution enter into any arrangement with its creditors with respect to the powers to be exercised by the liquidator and the manner in which they are to be exercised. R.S.O. 1960, c. 71, s. 245. Inspectors

Vacancy in  
office of  
liquidator

**205.** If a vacancy occurs in the office of liquidator by death, resignation or otherwise, the shareholders in general meeting may, subject to any arrangement the corporation may have entered into with its creditors upon the appointment of inspectors, fill such vacancy, and a general meeting for that purpose may be called by the continuing liquidator, if any, or by any shareholder or contributory, and shall be deemed to have been duly held if called in the manner prescribed by the articles or by-laws of the corporation, or, in default thereof, in the manner prescribed by this Act, for calling general meetings of the shareholders of the corporation. R.S.O. 1960, c. 71, s. 246, *amended*.

Removal of  
liquidator

**206.** The shareholders of the corporation may by a majority of the votes cast at a general meeting called for that purpose remove a liquidator appointed under section 203, 204 or 205, and in such case shall appoint another liquidator in his stead. R.S.O. 1960, c. 71, s. 247.

Commence-  
ment of  
winding up

**207.** A voluntary winding up commences at the time of the passing of the resolution requiring the winding up. R.S.O. 1960, c. 71, s. 248.

Corporation  
to cease  
business

**208.** A corporation being wound up voluntarily shall, from the commencement of its winding up, cease to carry on its undertaking, except in so far as may be required as beneficial for the winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidator, or alterations in the status of the shareholders of the corporation, taking place after the commencement of its winding up are void, but its corporate existence and all its corporate powers, notwithstanding that it is otherwise provided by its articles or by-laws, continue until its affairs are wound up. R.S.O. 1960, c. 71, s. 249, *amended*.

No proceed-  
ings against  
corporation  
after  
voluntary  
winding up  
except  
by leave

**209.** After the commencement of a voluntary winding up,

- (a) no action or other proceeding shall be commenced against the corporation; and
- (b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court imposes. R.S.O. 1960, c. 71, s. 250.

List of  
contribu-  
tories  
and calls

**210.—(1)** Upon a voluntary winding up, the liquidator,

- (a) shall settle the list of contributories;



(b) may, before he has ascertained the sufficiency of the property of the corporation, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay any sum that he considers necessary for satisfying the liabilities of the corporation and the costs, charges and expenses of winding up and for adjusting the rights of the contributories among themselves.

(2) A list settled by the liquidator under clause *a* of sub-section 1 is *prima facie* proof of the liability of the persons named therein to be contributories. List  
prima facie  
proof

(3) The liquidator in making a call under clause *b* of sub-section 1 may take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the call. R.S.O. 1960, c. 71, s. 251. Default  
on calls

**211.**—(1) The liquidator may, during the continuance of the voluntary winding up, call general meetings of the shareholders of the corporation for the purpose of obtaining their approval by resolution, or for any other purpose he thinks fit. Meetings of  
corporation  
during  
winding up

(2) Where a voluntary winding up continues for more than one year, the liquidator shall call a general meeting of the shareholders of the corporation at the end of the first year and of each succeeding year from the commencement of the winding up, and he shall lay before the meeting an account showing his acts and dealings and the manner in which the winding up has been conducted during the immediately preceding year. R.S.O. 1960, c. 71, s. 252, *amended*. Where  
winding up  
continues  
more than  
one year

**212.** The liquidator, with the approval of a resolution of the shareholders of the corporation passed in general meeting or with the approval of the inspectors, may make such compromise or other arrangement as the liquidator thinks expedient with any creditor or person claiming to be a creditor or having or alleging that he has a claim, present or future, certain or contingent, liquidated or unliquidated, against the corporation or whereby the corporation may be rendered liable. R.S.O. 1960, c. 71, s. 253, *amended*. Arrange-  
ments  
with  
creditors

**213.** The liquidator may, with the approval referred to in section 212, compromise all debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the corporation and any contributory, alleged contributory or other debtor or person who may be liable to the corporation and all questions in any way relating to or affecting the property of the corporation, Power to  
compromise  
with  
debtors  
and con-  
tributories

or the winding up of the corporation, upon the receipt of such sums payable at such times and generally upon such terms as are agreed, and the liquidator may take any security for the discharge of such debts or liabilities and give a complete discharge in respect thereof. R.S.O. 1960, c. 71, s. 254, *amended*.

Power to accept shares, etc., as consideration for sale of property to another body corporate

**214.**—(1) Where a corporation is proposed to be or is in the course of being wound up voluntarily and it is proposed to transfer the whole or a portion of its business or property to another body corporate, referred to in this subsection as the purchasing corporation, the liquidator of the first-mentioned corporation, with the approval of a resolution of the shareholders passed in general meeting of the corporation conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, may receive, in compensation or in part-compensation for the transfer, cash or shares or other like interest in the purchasing corporation or any other body corporate for the purpose of distribution among the creditors or shareholders of the corporation that is being wound up in the manner set forth in the arrangement, or may, in lieu of receiving cash or shares or other like interest, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing corporation or any other body corporate.

Confirmation of sale or arrangement

(2) A transfer made or arrangement entered into by the liquidator under this section is not binding on the shareholders of the corporation that is being wound up unless the shareholders or classes of shareholders, as the case may be, at a general meeting duly called for the purpose, by votes representing at least three-fourths of the shares or of each class of shares represented at the meeting, approve the transfer or arrangement and unless the transfer or arrangement is approved by an order made by the court on the application of the corporation.

Where resolution not invalid

(3) No resolution is invalid for the purposes of this section because it was passed before or concurrently with a resolution for winding up the corporation or for appointing the liquidator. R.S.O. 1960, c. 71, s. 255, *amended*.

Account of voluntary winding up to be made by liquidator to a general meeting

**215.**—(1) The liquidator shall make up an account showing the manner in which the winding up has been conducted and the property of the corporation disposed of, and thereupon shall call a general meeting of the shareholders of the corporation for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator, and the meeting shall be called in the manner

prescribed by the articles or by-laws or, in default thereof, in the manner prescribed by this Act for the calling of general meetings of shareholders.

(2) The liquidator shall within ten days after the holding of the meeting file a notice with the Minister stating that the meeting was held and the date thereof. Notice of holding of meeting

(3) Subject to subsection 4, on the expiration of three months from the date of the filing of the notice the corporation is dissolved. Dissolution

(4) At any time during the three-month period mentioned in subsection 3, the court may, on the application of the liquidator or any other person interested, make an order deferring the date on which the dissolution of the corporation is to take effect to a date fixed in the order, and in such event the corporation is dissolved on the date so fixed. R.S.O. 1960, c. 71, s. 279 (1-4), *amended*. Extension

(5) Notwithstanding anything in this Act, the court at any time after the affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order. R.S.O. 1960, c. 71, s. 280 (1), *amended*. Dissolution by court order

(6) The person on whose application an order was made under subsection 4 or 5 shall within ten days after it was made file with the Minister a certified copy of the order. R.S.O. 1960, c. 71, s. 279 (5), *amended*. Copy of extension order to be filed

### *Winding up by Court Order*

**216.** Sections 217 to 228 apply to corporations being wound up by order of the court. *New*. Application of ss. 217-228

**217.** A corporation may be wound up by order of the court, Winding up by court

- (a) where the shareholders by a majority of the votes cast at a general meeting called for that purpose or by such greater proportion of the votes cast as the articles provide pass a resolution authorizing an application to be made to the court to wind up the corporation;
- (b) where proceedings have been begun to wind up voluntarily and it appears to the court that it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court;



(c) where it is proved to the satisfaction of the court that the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its business and that it is advisable to wind it up; or

(d) where in the opinion of the court it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up. R.S.O. 1960, c. 71, s. 256, *amended*.

Who may  
apply

**218.**—(1) A winding-up order may be made upon the application of the corporation or of a shareholder or, where the corporation is being wound up voluntarily, of the liquidator or of a contributory or of a creditor having a claim of \$1,000 or more.

Notice

(2) Except where the application is made by the corporation, four days notice of the application shall be given to the corporation before the making of the application. R.S.O. 1960, c. 71, s. 257, *amended*.

Power  
of court

**219.** The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as is deemed just, and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise such powers of the court as are necessary for the reference. R.S.O. 1960, c. 71, s. 258, *amended*.

Appoint-  
ment of  
liquidator

**220.**—(1) The court in making the winding-up order may appoint one or more persons as liquidator of the estate and effects of the corporation for the purpose of winding up its affairs and distributing its property.

Remunera-  
tion

(2) The court may at any time fix the remuneration of the liquidator.

Vacancy

(3) If a liquidator appointed by the court dies or resigns or the office becomes vacant for any reason, the court may by order fill the vacancy. R.S.O. 1960, c. 71, s. 259 (1-3).

Notice of  
appoint-  
ment

(4) A liquidator appointed by the court under this section shall forthwith give to the Minister notice in writing of his appointment and shall, within twenty days of his appointment, publish the notice in *The Ontario Gazette*. *New*.

Removal of  
liquidator

**221.** The court may by order remove for cause a liquidator appointed by it, and in such case shall appoint another liquidator in his stead. R.S.O. 1960, c. 71, s. 259 (4).



**222.** The costs, charges and expenses of a winding up by order of the court shall be taxed by a taxing officer of the Supreme Court at Toronto. R.S.O. 1960, c. 71, s. 260. Costs and expenses

**223.** Where a winding-up order is made by the court without prior voluntary winding-up proceedings, the winding up shall be deemed to commence at the time of the service of notice of the application, and, where the application is made by the corporation, at the time the application is made. R.S.O. 1960, c. 71, s. 261. Commencement of winding up

**224.** Where a winding-up order has been made by the court, proceedings for the winding up of the corporation shall be taken in the same manner and with the like consequences as provided for a voluntary winding up, except that the list of contributories shall be settled by the court unless it has been settled by the liquidator before the winding-up order, in which case the list is subject to review by the court, and except that all proceedings in the winding up are subject to the order and direction of the court. R.S.O. 1960, c. 71, s. 262. Proceedings in winding up after order

**225.**—(1) Where a winding-up order has been made by the court, the court may direct meetings of the shareholders of the corporation to be called, held and conducted in such manner as the court thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of it to the court. Meetings of shareholders of corporation may be ordered

(2) Where a winding-up order has been made by the court, the court may require any contributory for the time being settled on the list of contributories, or any director, officer, employee, trustee, receiver, banker or agent of the corporation to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any sum or balance, documents, records, estate or effects that are in his hands and to which the corporation is *prima facie* entitled. Order for delivery by contributories and others of property, etc.

(3) Where a winding-up order has been made by the court, the court may make an order for the inspection of the documents and records of the corporation by its creditors and contributories, and any documents and records in the possession of the corporation may be inspected in conformity with the order. R.S.O. 1960, c. 71, s. 263, *amended*. Inspection of documents and records

**226.** After the commencement of a winding up by order of the court, Proceedings against corporation after court winding up

- (a) no action or other proceeding shall be proceeded with or commenced against the corporation; and

- (b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court imposes. R.S.O. 1960, c. 71, s. 264.

Provision  
for dis-  
charge of  
liquidator  
and distri-  
bution by  
the court

**227.**—(1) Where the realization and distribution of the property of a corporation being wound up under an order of the court has proceeded so far that in the opinion of the court it is expedient that the liquidator should be discharged and that the property of the corporation remaining in his hands can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to such officer or person as the court directs, of such property, and it shall be realized and distributed by or under the direction of the court among the persons entitled thereto in the same way as nearly as may be as if the distribution were being made by the liquidator.

Disposal of  
documents  
and  
records

(2) In such case, the court may make an order directing how the documents and records of the corporation and of the liquidator are to be disposed of, and may order that they be deposited in court or otherwise dealt with as the court thinks fit. R.S.O. 1960, c. 71, s. 283, *amended*.

Order for  
dissolution

**228.**—(1) The court at any time after the affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order.

Copy of  
dissolution  
order to  
be filed

(2) The person on whose application the order was made shall within ten days after it was made file with the Minister a certified copy of the order. R.S.O. 1960, c. 71, s. 280 (1, 2), *amended*.

### *Winding Up Generally*

Application  
of ss. 230-  
246

**229.** Sections 230 to 246 apply to corporations being wound up voluntarily or by order of the court. R.S.O. 1960, c. 71, s. 265.

Where no  
liquidator

**230.** Where there is no liquidator,

- (a) the court may by order on the application of a shareholder of the corporation appoint one or more persons as liquidator; and

- (b) the estate and effects of the corporation shall be under the control of the court until the appointment of a liquidator. R.S.O. 1960, c. 71, s. 266, *amended*.

**231.—(1)** Upon a winding up,

Consequences of winding up

- (a) the liquidator shall apply the property of the corporation in satisfaction of all its debts, obligations and liabilities and, subject thereto, shall distribute the property rateably among the shareholders according to their rights and interests in the corporation;
- (b) in distributing the property of the corporation, debts to employees of the corporation for services performed for it due at the commencement of the winding up or within one month before, not exceeding three months wages and for vacation pay accrued for not more than twelve months under *The Employment Standards Act, 1968* and the regulations thereunder or under a collective agreement made by the corporation, shall be paid in priority to the claims of the ordinary creditors, and such persons are entitled to rank as ordinary creditors for the residue of their claims; 1968, c. 35
- (c) all the powers of the directors cease upon the appointment of a liquidator, except in so far as the liquidator may sanction the continuance of such powers.

(2) Section 52 of *The Trustee Act* applies *mutatis mutandis* to liquidators. R.S.O. 1960, c. 71, s. 267, *amended*.

Distribution of property  
R.S.O. 1960.  
c. 408

**232.** The costs, charges and expenses of a winding up, including the remuneration of the liquidator, are payable out of the property of the corporation in priority to all other claims. R.S.O. 1960, c. 71, s. 268.

Payment of costs and expenses

**233.—(1)** A liquidator may,

Powers of liquidators

- (a) bring or defend any action, suit or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the corporation;
- (b) carry on the business of the corporation so far as may be required as beneficial for the winding up of the corporation;
- (c) sell the real and personal property, effects and things in action of the corporation by public auction or private sale;

- (d) do all acts and execute, in the name and on behalf of the corporation, all documents, and for that purpose use the seal of the corporation;
- (e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation;
- (f) raise upon the security of the property of the corporation any requisite money;
- (g) take out in his official name letters of administration of the estate of any deceased contributory and do in his official name any other act that is necessary for obtaining payment of any money due from a contributory or from his estate and which act cannot be done conveniently in the name of the corporation; and
- (h) do and execute all such other things as are necessary for winding up the affairs of the corporation and distributing its property.

Bills of exchange, etc., to be deemed drawn in the course of business

(2) The drawing, accepting, making or endorsing of a bill of exchange or promissory note by the liquidator on behalf of a corporation has the same effect with respect to the liability of the corporation as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of the corporation in the course of carrying on its business.

Where moneys deemed to be due to liquidator

(3) Where the liquidator takes out letters of administration or otherwise uses his official name for obtaining payment of any money due from a contributory, such money shall be deemed, for the purpose of enabling him to take out such letters or recover such money, to be due to the liquidator himself. R.S.O. 1960, c. 71, s. 269, *amended*.

Acts by more than one liquidator

**234.** Where more than one person is appointed as liquidator, any power conferred by sections 202 to 246 on a liquidator may be exercised by such one or more of such persons as may be determined by the resolution or order appointing them or, in default of such determination, by any number of them not fewer than two. *New*.

Nature of liability of contributory

**235.** The liability of a contributory creates a debt accruing due from him at the time his liability commenced, but payable at the time or respective times when calls are made for enforcing such liability. R.S.O. 1960, c. 71, s. 270.



**236.** If a contributory dies before or after he had been placed on the list of contributories, his personal representative is liable in due course of administration to contribute to the property of the corporation in discharge of the liability of the deceased contributory and shall be a contributory accordingly. R.S.O. 1960, c. 71, s. 271, *amended*.

Who liable  
in case of  
his death

**237.**—(1) The liquidator shall deposit all moneys that he has belonging to the corporation and amounting to \$100 or more in any chartered bank of Canada or in the Province of Ontario Savings Office or in any trust company or loan corporation that is registered under *The Loan and Trust Corporations Act*.

Deposit of  
moneys

R.S.O. 1960,  
c. 222

(2) If inspectors have been appointed, the depository under subsection 1 shall be one approved by them.

Approval  
of bank by  
inspectors

(3) Such deposit shall not be made in the name of the liquidator individually, but a separate deposit account shall be kept of the money belonging to the corporation in his name as liquidator of the corporation and in the name of the inspectors, if any, and such money shall be withdrawn only by order for payment signed by the liquidator and one of the inspectors, if any.

Separate  
deposit  
account  
to be kept;  
withdrawal  
from  
account

(4) At every meeting of the shareholders of the corporation the liquidator shall produce a pass-book or statement of account showing the amount of the deposits, the dates at which they were made, the amounts withdrawn and the dates of withdrawal, and mention of such production shall be made in the minutes of the meeting, and the absence of such mention is admissible in evidence as *prima facie* proof that the pass-book or statement of account was not produced at the meeting.

Liquidators  
to produce  
bank pass-  
book

(5) The liquidator shall also produce the pass-book or statement of account whenever so ordered by the court upon the application of the inspectors, if any, or of a shareholder of the corporation. R.S.O. 1960, c. 71, s. 272, *amended*.

Idem

**238.** For the purpose of proving claims, sections 25, 26 and 27 of *The Assignments and Preferences Act* apply *mutatis mutandis*, except that, where the word "judge" is used therein, the word "court" as used in this Act shall be substituted. R.S.O. 1960, c. 71, s. 273.

Proving  
claim

R.S.O. 1960,  
c. 25

**239.** Upon the application of the liquidator or of the inspectors, if any, or of any creditors, the court, after hearing such parties as it directs to be notified or after such steps as the court prescribes have been taken, may by order give its direction in any matter arising in the winding up. R.S.O. 1960, c. 71, s. 274.

Application  
for  
direction

Examination  
of persons  
as to  
estate

**240.**—(1) The court may at any time after the commencement of the winding up summon to appear before the court or liquidator any director, officer or employee of the corporation or any other person known or suspected to have in his possession any of the estate or effects of the corporation, or alleged to be indebted to it, or any person whom the court thinks capable of giving information concerning its trade, dealings, estate or effects.

Damages  
against  
delinquent  
directors,  
etc.

(2) Where in the course of the winding up it appears that a person who has taken part in the formation or promotion of the corporation or that a past or present director, officer, employee, liquidator or receiver of the corporation has misapplied or retained in his own hands, or become liable or accountable for, property of the corporation, or has committed any misfeasance or breach of trust in relation to it, the court may, on the application of the liquidator or of any creditor, shareholder or contributory, examine into the conduct of that person and order him to restore the property so misapplied or retained, or for which he has become liable or accountable, or to contribute such sum to the property of the corporation by way of compensation in respect of such misapplication, retention, misfeasance or breach of trust, or both, as the court thinks just. R.S.O. 1960, c. 71, s. 275, *amended*.

Proceedings  
by share-  
holders

**241.**—(1) Where a shareholder of the corporation desires to cause any proceeding to be taken that, in his opinion, would be for the benefit of the corporation, and the liquidator, under the authority of the shareholders or of the inspectors, if any, refuses or neglects to take such proceeding after being required so to do, the shareholder may obtain an order of the court authorizing him to take such proceeding in the name of the liquidator or corporation, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator or corporation as the court prescribes.

Benefits,  
when for  
shareholders

(2) Any benefit derived from a proceeding under subsection 1 belongs exclusively to the shareholder causing the institution of the proceeding for his benefit and that of any other shareholder who has joined him in causing the institution of the proceeding.

when for  
corporation

(3) If before the order is granted the liquidator signifies to the court his readiness to institute the proceeding for the benefit of the corporation, the court shall make an order prescribing the time within which he is to do so, and in that case the advantage derived from the proceeding, if instituted within such time, belongs to the corporation. R.S.O. 1960, c. 71, s. 276, *amended*.

**242.** The rights conferred by this Act are in addition to any other right to institute proceedings against any contributory, or against any debtor of the corporation, for the recovery of any sum due from such contributory or debtor or his estate. R.S.O. 1960, c. 71, s. 277, *amended*. Rights conferred by Act to be in addition to other powers

**243.** At any time during a winding up, the court, upon the application of a shareholder, creditor or contributory and upon proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed, may make an order staying the proceedings altogether or for a limited time on such terms and subject to such conditions as the court thinks fit. R.S.O. 1960, c. 71, s. 278. Stay of winding-up proceedings

**244.**—(1) Where the liquidator is unable to pay all the debts of the corporation because a creditor is unknown or his whereabouts is unknown, the liquidator may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and thereupon subsections 5 and 6 of section 248 apply thereto. Where creditor unknown

(2) A payment under subsection 1 shall be deemed to be in satisfaction of the debt for the purposes of winding up. R.S.O. 1960, c. 71, s. 281 (3, 4), *amended*. Idem

**245.**—(1) Where the liquidator is unable to distribute rateably the property of the corporation among the shareholders because a shareholder is unknown or his whereabouts is unknown, the share of the property of the corporation of such shareholder may, by agreement with the Public Trustee, be delivered or conveyed by the liquidator to the Public Trustee to be held in trust for the shareholder, and thereupon subsections 5 and 6 of section 248 apply thereto. Where shareholder unknown

(2) A delivery or conveyance under subsection 1 shall be deemed to be a distribution to that shareholder of his rateable share for the purposes of the winding up. R.S.O. 1960, c. 71, s. 281 (1, 2), *amended*. Idem

**246.**—(1) Where a corporation has been wound up under sections 202 to 245 and is about to be dissolved, its documents and records and those of the liquidator may be disposed of as it by resolution directs in case of voluntary winding up, or as the court directs in case of winding up under an order. Disposal of records, etc., after winding up

(2) After the expiration of five years from the date of the dissolution of the corporation, no responsibility rests on it or the liquidator, or anyone to whom the custody of the documents and records has been committed, by reason that the When responsibility as to custody of records, etc., to cease



same or any of them are not forthcoming to any person claiming to be interested therein. R.S.O. 1960, c. 71, s. 282, *amended*.

### *Other Dissolution*

Voluntary  
dissolution

**247.** A corporation may be dissolved upon the authorization of,

- (a) a majority of the votes cast at a general meeting of the shareholders of the corporation duly called for the purpose or by such other proportion of the votes cast as the articles provide;
- (b) the consent in writing of all the shareholders entitled to vote at such meeting; or
- (c) all its incorporators or their personal representatives at any time within two years after the date of issuance of its certificate of incorporation where the corporation has not commenced business and has not issued any shares. R.S.O. 1960, c. 71, s. 327 (1) (a), *amended*.

Articles of  
dissolution  
where  
corporation  
active

**248.—(1)** For the purpose of bringing the dissolution authorized under clause *a* or *b* of section 247 into effect, the corporation shall deliver to the Minister articles of dissolution in duplicate, executed under the seal of the corporation and signed by two officers or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the articles of dissolution, setting out,

- (a) the name of the corporation;
- (b) that its dissolution has been duly authorized under clause *a* or *b* of section 247;
- (c) that it has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection 3 or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;
- (d) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute among its shareholders or that it has distributed its remaining property rateably among its shareholders according to their rights and interests in the corporation or in accordance with subsection 4 where applicable;



(e) that there are no proceedings pending in any court against it; and

(f) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office. R.S.O. 1960, c. 71, s. 327 (1), *part, amended*.

(2) For the purpose of bringing a dissolution authorized under clause *c* of section 247 into effect, the corporation shall deliver to the Minister articles of dissolution in duplicate, signed by all its incorporators or their personal representatives and verified by affidavit of one of them setting out,

Articles of  
dissolution  
where  
corporation  
never  
active

(a) the name of the corporation;

(b) the date of the issuance of its certificate of incorporation;

(c) that the corporation has not commenced business;

(d) that none of its shares has been issued;

(e) that dissolution has been duly authorized under clause *c* of section 247;

(f) that it has no debts, obligations or liabilities;

(g) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute or that it has distributed its remaining property to the persons entitled thereto;

(h) that there are no proceedings pending in any court against it; and

(i) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office. *New*.

(3) Where a corporation authorizes its dissolution and a creditor is unknown or his whereabouts is unknown, the corporation may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and such payment shall be deemed to be due provision for the debt for the purposes of clause *c* of subsection 1.

Where  
creditor  
unknown

Where  
shareholder  
unknown

(4) Where a corporation authorizes its dissolution and a shareholder is unknown or his whereabouts is unknown, it may, by agreement with the Public Trustee, deliver or convey his share of the property to the Public Trustee to be held in trust for him, and such delivery or conveyance shall be deemed to be a distribution to that shareholder of his rateable share for the purposes of the dissolution.

Power to  
convert

(5) If the share of the property so delivered or conveyed to the Public Trustee under subsection 4 is in a form other than cash, the Public Trustee may at any time, and within ten years after such delivery or conveyance shall, convert it into cash.

Payment  
to person  
entitled

(6) If the amount paid under subsection 3 or the share of the property delivered or conveyed under subsection 4 or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled thereto within ten years after it was so delivered, conveyed or paid, it shall be delivered, conveyed or paid to him, but, if not so claimed, it vests in the Public Trustee for the use of Ontario, and, if the person beneficially entitled thereto at any time thereafter establishes his right thereto to the satisfaction of the Lieutenant Governor in Council, an amount equal to the amount so vested in the Public Trustee shall be paid to him. R.S.O. 1960, c. 71, s. 327 (3-6), *amended*.

Certificate  
of  
dissolution

**249.**—(1) If the articles of dissolution conform to law, the Minister shall, when all prescribed fees have been paid and all taxes payable by the corporation to the Treasurer of Ontario have been paid,

- (a) endorse on each duplicate of the articles of dissolution the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of dissolution to which he shall affix the other duplicate.

Effect of  
certificate

(2) The dissolution becomes effective and the corporation is dissolved upon the date set forth in the certificate of dissolution. *New*.

Cancellation  
of certificate  
etc., by  
Minister

**250.** Where sufficient cause is shown to the Minister, he may, after he has given the corporation an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any certificate issued by him under this Act, and,

- (a) in the case of the cancellation of a certificate of incorporation, the corporation is dissolved on the date fixed in the order;
- (b) in the case of the cancellation of any other certificate, the matter that became effective upon the issuance of the certificate ceases to be in effect from the date fixed in the order. R.S.O. 1960, c. 71, s. 326 (1), *amended*.

**251.**—(1) Where a corporation is in default in filing an annual return under *The Corporations Information Act*, or a predecessor thereof, the Minister shall send notice of the default to the corporation by mail within one year after the default. Notice of default in filing returns R.S.O. 1960, c. 72

(2) Where a corporation is in default in filing an annual return for a period of two years, the Minister may give notice, by registered mail to the corporation or by publication once in *The Ontario Gazette*, that an order dissolving the corporation will be issued unless the corporation files the annual return within one year after the giving of the notice. Notice of default in filing returns

(3) Upon default in compliance with the notice given under subsection 2, the Minister may by order cancel the certificate of incorporation and, subject to subsection 4, the corporation is dissolved on the date fixed in the order. Dissolution for default

(4) Where a corporation is dissolved under subsection 3, the Minister, on the application of any interested person immediately before the dissolution, made within two years after the date of dissolution, may in his discretion by order, on such terms and conditions as he sees fit to impose, revive the corporation, and thereupon the corporation, subject to the terms and conditions of the order and to any rights acquired by any person after its dissolution, is restored to its legal position, including all its property, rights, privileges and franchises, and is subject to all its liabilities, contracts, disabilities and debts, as at the date of its dissolution, in the same manner and to the same extent as if it had not been dissolved. R.S.O. 1960, c. 71, s. 326 (2,3); 1964, c. 10, s. 8, *amended*. Revival

**252.**—(1) Notwithstanding the dissolution of a corporation under section 249, 250 or 251 or by the expiration of the period of its duration, Suits after dissolution

- (a) any action, suit or other proceeding commenced by or against the corporation before its dissolution may be proceeded with as if the corporation had not been dissolved;



(b) any action, suit or other proceeding may be brought against the corporation within two years after its dissolution as if the corporation had not been dissolved; and

(c) any property that would have been available to satisfy any judgment, order or other decision if the corporation had not been dissolved remains available for such purpose. 1962-63, c. 24, s. 12, *amended*.

Service  
after  
dissolution

(2) For the purposes of this section, the service of any process on a corporation after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Department as being a director or officer of the corporation before the dissolution. *New*.

Liability  
of share-  
holders to  
creditors

**253.**—(1) Notwithstanding the dissolution of a corporation, each of the shareholders among whom its property has been distributed remains liable to its creditors to the extent of the amount received by him upon the distribution, and an action in a court of competent jurisdiction to enforce such liability may be brought against him within two years from the date of the dissolution and not thereafter.

Action  
against  
one share-  
holder as  
representing  
class

(2) Where there are numerous shareholders, the court referred to in subsection 1 may permit an action to be brought against one or more shareholders as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such shareholders as are found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined. R.S.O. 1960, c. 71, s. 329, *amended*.

Forfeiture  
of un-  
disposed  
property

**254.** Subject to section 252, any real or personal property of a corporation that has not been disposed of at the date of its dissolution is forfeit to the Crown. R.S.O. 1960, c. 71, s. 330, *amended*.

#### GENERAL

Notice to  
directors  
and  
shareholders

**255.**—(1) Subject to the articles or by-laws of a corporation,

(a) a notice or other document required to be given or sent by a corporation to a shareholder or director may be delivered personally or sent by prepaid mail addressed to the shareholder or director at his latest address as shown on the records of the corporation; and



- (b) a notice or other document sent by mail by a corporation to a shareholder or director shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. R.S.O. 1960, c. 71, s. 332, *amended*.

(2) Except where otherwise provided in this Act, a notice or document required to be given or sent to a corporation may be sent to the corporation by prepaid mail at its head office as shown on the records of the Department and shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. Notice to corporation

(3) Where a notice is required by this Act to be given, the giving of the notice may be waived or the time for the notice may be waived or abridged with the consent in writing of every person entitled thereto, whether before or after the time prescribed. *New*. Waiver of notice and abridgement of times

**256.**—(1) Every person who makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omission of which makes the statement false or misleading is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1960, c. 71, s. 339 (1), *amended*. Offence, false statements

(2) No person is guilty of an offence under subsection 1 if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading. *New*. Defence

**257.**—(1) Every person who fails to file with the Minister any document required by this Act to be filed with him is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or, if such person is a body corporate, to a fine of not more than \$20,000. Offence, failure to file

(2) Where a body corporate is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000. *New*. Idem

**258.** No proceeding under section 256 or 257 shall be commenced except with the consent or under the direction of the Minister. *New*. Consent

Offence,  
general

**259.**—(1) Except where otherwise provided, every person who commits an act contrary to or fails or neglects to comply with any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or, if such person is a body corporate, to a fine of not more than \$10,000.

Idem

(2) Where a body corporate is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in the offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000. R.S.O. 1960, c. 71, s. 340, *amended*.

Limitation

**260.**—(1) No proceeding under section 256 or 257 or under section 259 for a contravention of section 161 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Minister as certified by him. R.S.O. 1960, c. 71, s. 339 (2), *amended*.

Idem

(2) No proceedings under section 259 for a contravention of section 148 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(3) Subject to subsections 1 and 2, no proceeding for an offence under this Act or the regulations shall be commenced more than one year after the time when the subject-matter of the offence arose. *New*.

Orders for  
compliance

**261.**—(1) Where a corporation or a director, officer or employee of a corporation does not comply with any provision of this Act, the articles or the by-laws of the corporation, a shareholder or a creditor of the corporation, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, may apply to the court for an order directing the corporation, director, officer or employee, as the case may be, to comply with such provision, and upon such an application the court may make such order or such other order as the court thinks fit. R.S.O. 1960, c. 71, s. 341, *amended*.

Idem

(2) Where it appears to the Commission that any person or corporation to which section 117, subsection 1 of section 118 or section 148 applies has failed to comply with or is contravening any such provision, notwithstanding the imposition of any penalty in respect of such non-compliance or contravention, the Commission may apply to the court for an order directing such person or corporation to comply with such provision or for an order restraining such person or corporation from

contravening such provision and upon such application the court may make such order or such other order as the court thinks fit. 1968-69, c. 17, s. 10, *amended*.

**262.** The Minister may delegate in writing any of his duties or powers under this Act to any public servant in the Department. R.S.O. 1960, c. 71, s. 5, *part, amended*. Powers of Minister

**263.**—(1) The Minister may require any fact relevant to the performance of his duties under this Act or the regulations to be verified by affidavit or otherwise. Proof by affidavit

(2) For the purpose of holding a hearing under this Act, the Minister may administer oaths to witnesses and require them to give evidence under oath. R.S.O. 1960, c. 71, s. 7, *amended*. Oaths at hearings

**264.** The Minister shall cause notice to be published forthwith in *The Ontario Gazette*, Publication of notices in *The Ontario Gazette*

(a) of the issue of every certificate under section 5, 8, 31, 191, 195, 197, 198 or 249;

(b) of the issue of every order under section 161, 250 or 251;

(c) of the filing of a certified copy of an order under subsection 6 of section 215 or subsection 2 of section 228; and

(d) of the filing of a notice by a liquidator under subsection 2 of section 215 or by a corporation under subsection 4 of section 203. R.S.O. 1960, c. 71, s. 10, *amended*.

**265.**—(1) Upon payment of the prescribed fee, any person is entitled to examine any document filed with or issued by the Minister under this Act, and to make extracts therefrom. Searches

(2) Upon payment of the prescribed fee, the Minister shall furnish any person with a certificate as to whether or not a document has been filed with or issued by him under this Act or any predecessor thereof or with a certified copy of any such document. *New*. Certifications by Minister

**266.**—(1) Where this Act requires or authorizes the Minister to issue a certificate or certify any fact, the certificate shall be issued under the seal of the Minister and shall be signed by him or by such officer of the Department as is designated by the regulations. *New*. Execution of certificates of Minister



Certificates  
as  
evidence

(2) Any certificate purporting to be under the seal of the Minister and signed by a person authorized by or under subsection 1, or any certified copy, is receivable in evidence in any action, prosecution or other proceeding as *prima facie* proof of the facts so certified without proof of the seal or of the signature or the official position of the person appearing to have signed the certificate. R.S.O. 1960, c. 71, s. 333, *amended*.

Notice of  
refusal  
to file

**267.**—(1) Where the Minister refuses to file any articles or any other document required by this Act to be filed by him before it becomes effective, he shall give written notice to the person who delivered the articles or other document of his refusal, specifying the reasons therefor.

Failure  
to act  
deemed  
refusal

(2) Where, within six months after the delivery to the Minister of articles or other document referred to in subsection 1, the Minister has not filed or refused to file such articles or other document, he shall be deemed for the purposes of section 268 to have refused to file it. *New*.

Appeal  
from  
Minister

**268.**—(1) Any person who feels aggrieved by a decision of the Minister to,

- (a) refuse to file articles or any other document or to issue any certificate required by this Act to be filed or issued;
- (b) issue or refuse to issue a certificate of amendment under subsection 2, 3 or 4 of section 8; or
- (c) issue an order under section 250,

may appeal the decision to the Court of Appeal.

Form of  
appeal

(2) Every appeal shall be by notice of motion sent by registered mail to the Minister within thirty days after the mailing of the notice of the decision, and the practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action, provided that the Rules Committee may vary or amend such practice and procedure or may prescribe the practice and procedure that shall be applicable to appeals taken under this Act.

Certificate  
of  
Minister

(3) The Minister shall certify to the Registrar of the Supreme Court,

- (a) the decision of the Minister, together with a statement of the reasons therefor;



(b) the record of any hearing; and

(c) all written submissions to the Minister or other material that is relevant to the appeal. *New.*

(4) The Minister is entitled to be heard, by counsel or <sup>Representa-  
tion</sup> otherwise, upon the argument of an appeal under this section. 1962-63, c. 24, s. 11, *part, amended.*

(5) Where an appeal is taken under this section, the Court <sup>Order of  
Court  
of Appeal</sup> of Appeal may by its order direct the Minister to make such decision or to do such other act as the Minister is authorized and empowered to do under this Act and as the court thinks proper, having regard to the material and submissions before it and to this Act, and the Minister shall make such decision or do such act accordingly.

(6) Notwithstanding an order of the Court of Appeal, the Minister has power to make any further decision upon new <sup>Minister  
may make  
further  
decision</sup> material or where there is a material change in the circumstances, and every such decision is subject to this section. *New.*

**269.**—(1) Section 5 of *The Securities Act, 1966* applies, <sup>Hearings of  
Commis-  
sion</sup> so far as possible, to hearings of the Commission under this Act. 1966, c. 142

(2) Any person who feels aggrieved by a decision of the Commission under this Act may appeal the decision to the Court of Appeal, and subsections 2 to 6 of section 29 of *The Securities Act, 1966* apply to the appeal. *New.* <sup>Appeal  
from  
Commission</sup>

**270.** An appeal lies to the Court of Appeal from any order made by the court under this Act. R.S.O. 1960, c. 71, s. 338. <sup>Appeal  
from  
court</sup>

**271.** The Lieutenant Governor in Council may make <sup>Regulations</sup> regulations respecting any matter that he considers necessary relating to the incorporation, conduct and dissolution of corporations including, without limiting the generality of the foregoing, regulations,

- (a) respecting names of corporations or classes thereof, objects of corporations, authorized capital of corporations, the designation, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes of shares of corporations, or any other matter pertaining to articles or the filing thereof;

- (b) requiring the payment of fees for any matter that the Minister is required or authorized to do under this Act, and prescribing the amounts thereof;
- (c) prescribing any matter required by this Act to be prescribed by the regulations;
- (d) designating officers of the Department for the purposes of paragraph 7 of subsection 1 of section 1 and section 266;
- (e) respecting the form and content of the reports of insiders required to be filed under section 148;
- (f) respecting the form and content of information circulars required by section 118. R.S.O. 1960, c. 71, s. 335; 1966, c. 28, ss. 3, 4, *part, amended*.

Continu-  
ance of  
letters  
patent, etc.

**272.**—(1) Any provision in the letters patent, supplementary letters patent or by-laws of a corporation that was valid immediately before this Act comes into force except a by-law that contravenes section 147 continues to be valid and in effect, but any additions or amendments thereto or deletions therefrom shall be made in accordance with this Act.

Continu-  
ance re  
shares not  
fully paid  
R.S.O. 1960,  
c. 71

(2) The provisions of *The Corporations Act* relating to the liability of the holder of shares that are not fully paid and to the enforcement of such liability continue to apply in respect of shares that are not fully paid when this Act comes into force. *New*.

Commence-  
ment

**273.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

**274.** This Act may be cited as *The Business Corporations Act, 1970*.









The Business Corporations Act, 1970

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*1st Reading*

April 29th, 1970

*2nd Reading*

May 5th, 1970

*3rd Reading*

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MR. LAWRENCE (Carleton East)

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*(Reprinted as amended by the  
Committee of the Whole House)*

## BILL 61

Government  
Publication

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
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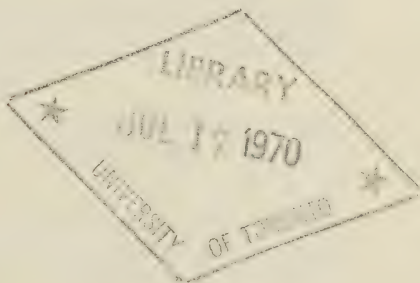
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**The Business Corporations Act, 1970**

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MR. LAWRENCE (Carleton East)

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## The Business Corporations Act, 1970

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** In this Act,

Interpre-  
tation

1. "affiliate" means an affiliated body corporate within the meaning of subsection 4;
2. "articles of incorporation" or "articles" means the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which a corporation is incorporated, and includes any amendments thereto;
3. "associate", where used to indicate a relationship with any person, means,
  - (i) any body corporate of which such person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the body corporate for the time being outstanding,
  - (ii) any partner of that person acting by or for the partnership of which they are both partners,
  - (iii) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity,
  - (iv) any spouse, son or daughter of that person, or
  - (v) any relative of such person or of his spouse, other than a relative referred to in subparagraph iv, who has the same home as such person.

4. "authorized capital" means the authorized capital as determined under section 24;
5. "body corporate" means any body corporate with or without share capital and whether or not it is a corporation to which this Act applies;
6. "certificate of incorporation" includes letters patent, a special Act or any other instrument by which a corporation is incorporated;
7. "certified copy" means,
  - i. in relation to a document of a corporation, a copy of the document certified to be a true copy under the seal of the corporation and signed by an officer thereof,
  - ii. in relation to a document issued by a court, a copy of the document certified to be a true copy under the seal of the court and signed by the registrar or clerk thereof,
  - iii. in relation to a document in the custody of the Department, a copy of the document certified to be a true copy under the seal of the Minister and signed by the Minister or by such officer of the Department as is designated by the regulations;
8. "Commission" means the Ontario Securities Commission;
9. "corporation" means a body corporate with share capital to which this Act applies;
10. "court" means the Supreme Court of Ontario presided over by one of those judges of the High Court who are designated by the Chief Justice of the High Court for the purpose of hearing applications under this Act;
11. "debt obligation" means a bond, debenture, note or other similar obligation of a body corporate, whether secured or unsecured;
12. "Department" means the Department of the Minister;
13. "equity share" means any share of any class of shares of a body corporate carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

14. "financial statement" means a financial statement referred to in section 172;
15. "insider" or "insider of a corporation" means,
  - i. any director or senior officer of a corporation that is offering its securities to the public,
  - ii. any person who beneficially owns, directly or indirectly, equity shares of such a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, but, in computing the percentage of voting rights attached to equity shares owned by an underwriter as defined in *The Securities Act, 1966*, there shall be excluded any equity shares that have been acquired by him as underwriter in the course of distribution to the public of such shares, but such exclusion ceases to have effect on completion or cessation of the distribution to the public by him, or
  - iii. any person who exercises control or direction over the equity shares of such a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding;
16. "interim financial statement" means a financial statement referred to in section 185;
17. "issued capital" means the issued capital as determined under section 32;
18. "Minister" means the Minister of Financial and Commercial Affairs or such other member of the Executive Council to whom the administration of this Act may be assigned.
19. "officer" means the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager, or any other person designated an officer by by-law or by resolution of the directors;
20. "personal representative", where used with reference to holding shares in that capacity, means an executor, administrator, guardian, tutor, trustee, receiver or liquidator or the committee of or curator to a mentally incompetent person;
21. "prescribed" means prescribed by the regulations;

22. "regulations" means the regulations made under this Act;
23. "related person", where used to indicate a relationship with any person, means,
  - (i) any spouse, son or daughter of that person,
  - (ii) any relative of such person or of his spouse, other than a relative referred to in subparagraph i, who has the same home as such person, or
  - (iii) any body corporate of which such person and any of the persons referred to in subparagraph i or ii or the partner or employer of such person, either alone or in combination, beneficially owns, directly or indirectly, equity shares carrying more than 50 per cent of the voting rights attached to all equity shares of the body corporate for the time being outstanding.
24. "security" means any share of any class of shares or any debt obligation of a body corporate;
25. "senior officer" means,
  - i. the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other individual who performs functions for the corporation similar to those normally performed by an individual occupying any such office, and
  - ii. each of the five highest paid employees of a corporation, including any individual referred to in subparagraph i;
26. "special by-law" means a by-law that is not effective until it is,
  - i. passed by the directors of a corporation, and
  - ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the shareholders of the corporation duly called for that purpose, or such greater proportion of the votes cast as the articles provide, or, in lieu of such confirmation, by the consent in writing of all the shareholders entitled to vote at such meeting;



27. "special resolution" means a resolution that is not effective until it is,

- i. passed by the directors of a corporation, and
- ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the shareholders of the corporation duly called for that purpose, or such greater proportion of the votes cast as the articles provide, or, in lieu of such confirmation, by the consent in writing of all the shareholders entitled to vote at such meeting.

28. "warrant" means any document issued by a body corporate entitling the holder to purchase a security of the body corporate on specified terms. R.S.O. 1960, c. 71, s. 1; 1966, c. 28, ss. 1, 3, *part*; 1968-69, c. 16, s. 1 (1), *amended*.

(2) For the purposes of this Act, a body corporate shall be deemed to be a subsidiary of another body corporate if, but only if, <sup>Interpretation:</sup> subsidiary corporation

(a) it is controlled by,

- (i) that other, or
- (ii) that other and one or more bodies corporate each of which is controlled by that other, or
- (iii) two or more bodies corporate each of which is controlled by that other; or

(b) it is a subsidiary of a body corporate that is that other's subsidiary.

(3) For the purposes of this Act, a body corporate shall be deemed to be another's holding body corporate if, but only if, that other is its subsidiary. <sup>Holding corporation</sup>

(4) For the purposes of this Act, one body corporate shall be deemed to be affiliated with another body corporate if, but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. R.S.O. 1960, c. 71, s. 90 (1-3), *amended*. <sup>Affiliated corporation</sup>

(5) For the purposes of this Act, a body corporate shall be deemed to be controlled by another person or by two or more bodies corporate if, but only if, <sup>Control</sup>

- (a) shares of the first-mentioned body corporate carrying more than 50 per cent of the votes for the election

of directors are held, other than by way of security only, by or for the benefit of such other person or by or for the benefit of such other bodies corporate; and

- (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned body corporate. R.S.O. 1960, c. 71, s. 90 (4); 1966, c. 28, s. 12, *amended*.

Insider

- (6) For the purposes of this Act,

- (a) every director or senior officer of a body corporate that is itself an insider of another body corporate shall be deemed to be an insider of such other body corporate;
- (b) an individual shall be deemed to own beneficially securities beneficially owned by a body corporate controlled by him or by an affiliate of such body corporate;
- (c) a body corporate shall be deemed to own beneficially securities beneficially owned by its affiliates; and
- (d) the acquisition or disposition by an insider of a put, call or other transferable option in respect of a security shall be deemed a change in the beneficial ownership of the security to which such transferable option relates. 1966, c. 28, s. 3, *part, amended*.

Insolvency

- (7) For the purposes of this Act, a corporation is insolvent if its liabilities exceed the realizable value of its assets or if the corporation is unable to pay its debts as they become due.

Number of  
shareholders

- (8) In determining the number of shareholders of a corporation, for the purposes of this Act, two or more persons holding the same share or shares jointly shall be counted as one shareholder.

Offering  
securities  
to public

- (9) A body corporate shall be deemed to be offering its securities to the public where,

- (a) in respect of any of the securities of which a prospectus or statement of material facts has been filed with and accepted by the Commission under *The Securities Act, 1966*, or any predecessor thereof, so long as any of such securities are outstanding; or

1966, c. 142

- (b) any of the shares of which are listed and posted for trading on any stock exchange in Ontario recognized by the Commission,

except that where, upon the application of a corporation that has fewer than 15 shareholders, the Commission is satisfied, in its discretion, that to do so would not be prejudicial to the public interest, the Commission may order, subject to such terms and conditions as the Commission may impose, that the Corporation shall be deemed to have ceased to be offering its securities to the public. *New.*

**2.**—(1) This Act, except where it is otherwise expressly provided, applies, Application

- (a) to every corporation incorporated by or under a general or special Act of the Parliament of the former Province of Upper Canada;
- (b) to every corporation incorporated by or under a general or special Act of the Parliament of the former Province of Canada that has its head office and carries on business in Ontario and that was incorporated with objects to which the authority of the Legislature extends; and
- (c) to every corporation incorporated by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation incorporated for the construction and working of a railway, an incline railway or a street railway, or to a corporation within the meaning of *The Loan and Trust Corporations Act* except as provided by that Act. R.S.O. 1960,  
c. 222 R.S.O. 1960, c. 71, s. 17.

(2) This Act does not apply to a corporation that, Idem

- (a) is a company within the meaning of *The Corporations Act* and has objects in whole or in part of a social nature; R.S.O. 1960  
c. 71
- (b) is a corporation or company within the meaning of Part V of *The Corporations Act*;
- (c) is a corporation that is an insurer within the meaning of subsection 1 of section 143 of *The Corporations Act*;
- (d) is a corporation to which *The Credit Unions Act* applies. R.S.O. 1960,  
c. 79 *New.*

#### INCORPORATION

**3.**—(1) A corporation may be incorporated under this Incorporation Act for any lawful objects to which the authority of the Legislature extends, except those of a corporation the incorporation of which is provided for in any other Act. R.S.O. 1960, c. 71, s. 3 (1), *amended.*

Idem

(2) Notwithstanding subsection 1, a corporation may be incorporated under this Act with power only to lend and invest money on mortgage of real estate or otherwise, or with power only to accept and execute the office of liquidator, receiver, assignee, trustee in bankruptcy or trustee for the benefit of creditors and to accept the duty of and to act generally in the winding up of corporations, partnerships and estates, other than estates of deceased persons, and shall not by reason thereof be deemed to be a corporation within the meaning of *The Loan and Trust Corporations Act*, but the number of its shareholders, exclusive of persons who are in the employment of the company, shall be limited by its articles to five, and no such corporation shall issue debt obligations except to its shareholders, or borrow money on the security of its property except from its shareholders, or receive money on deposit or offer its securities to the public. R.S.O. 1960, c. 71, s. 3 (2); 1966, c. 28, s. 2, *amended*.

R.S.O. 1960  
c. 222

Professions

(3) Where the practice of a profession is governed by an Act, a corporation may be incorporated to practise the profession only if such Act expressly permits the practice of such profession by a corporation and subject to the provisions of such Act. *New*.

Articles of  
incorpora-  
tion

4.—(1) One or more persons, being a body corporate or a natural person who is of the age of twenty-one years or more, may incorporate a corporation by signing and delivering to the Minister in duplicate articles of incorporation. *New*.

Contents of  
articles

(2) The articles of incorporation shall set out,

1. The name of the corporation to be incorporated.
2. The objects for which the corporation is to be incorporated.
3. The place in Ontario where the head office of the corporation is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district and the address giving the street and number, if any.
4. The authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share, or, where the shares are to be without par value, the consideration, if any, exceeding which each share may not be issued or the aggregate consideration, if any, exceeding which all the shares of each class may not be issued.



5. Where there are to be special shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to them or each class of them.
6. The restrictions, if any, to be placed on the transfer of its shares or any class thereof.
7. The number of directors of the corporation and the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the corporation.
8. The class and number of shares, if any, to be taken by each incorporator and the amount to be paid therefor.
9. The names in full, and the residence address, giving street and number, if any, of each of the incorporators.
10. Any other matter required by this Act or the regulations to be set out in the articles.

(3) The articles may set out any provision that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the corporation. R.S.O. 1960, c. 71, s. 18, *amended*. Idem

(4) Where the articles name as a first director a person who is not an incorporator, the articles shall have attached thereto his written and signed consent to act as a first director. Consent of first directors

(5) The signature of each incorporator and of each first director and the fact that each incorporator who is a natural person and each first director is of the age of twenty-one years or more shall be verified by affidavit. *New*. Affidavits

5.—(1) If the articles conform to law and the approval of any person or body required by statute to approve the incorporation has been given, the Minister shall, when all prescribed fees have been paid, Certificate of incorporation

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the incorporators or their agent a certificate of incorporation to which he shall affix the other duplicate. *New*.

(2) A corporation comes into existence upon the date set forth in its certificate of incorporation. 1961-62, c. 21, s. 1, *amended*. Idem

Idem

(3) A certificate of incorporation is conclusive proof that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act, except in a proceeding under section 250 to cancel the certificate for cause. R.S.O. 1960, c. 71, s. 9, *amended*.

## NAME

Use of  
word  
"Limited"

**6.**—(1) The name of a corporation shall have the word "Limited" or "Incorporated" or its corresponding abbreviation "Ltd." or "Inc." as the last word thereof. R.S.O. 1960, c. 71, s. 20 (1), *amended*.

Use of  
name

(2) Where a corporation or a director, officer or employee thereof uses the name of the corporation, the word "Limited" or "Incorporated" or its corresponding abbreviation "Ltd." or "Inc.", shall appear as the last word thereof.

Exception

(3) Stamping, writing, printing or otherwise marking on goods, wares or merchandise of the corporation or upon packages containing the goods, wares or merchandise shall not be deemed a use of the name within the meaning of subsection 2. R.S.O. 1960, c. 71, s. 21 (1, 2), *amended*.

Use of  
name

**7.** Notwithstanding section 6, a corporation may use its name in such form and in such language as the articles provide and as the Minister approves. 1964, c. 10, s. 1, *amended*.

Corporate  
name

**8.**—(1) The name of a corporation shall not,

(a) be the same as or similar to the name of a known body corporate, association, partnership or individual whether in existence or not if its use would be likely to deceive, except where the body corporate, association, partnership or individual signifies its or his consent in writing to the use of the name in whole or in part, and, if required by the Minister,

(i) in the case of a body corporate, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles or amendment by which the name is acquired, or

(ii) in the case of an association, partnership or individual, undertakes to cease to carry on its or his business or activities, or change its or his name to a dissimilar name, within six months after the filing of the articles or amendment by which the name is acquired;

- (b) suggest or imply a connection with the Crown or the Government of Canada or the government of a municipality or any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government or municipality without the consent in writing of the appropriate authority;
- (c) where the objects applied for are of a political nature, suggest or imply a connection with a political party or a leader of a political party;
- (d) include the word "co-operative" or any abbreviation or derivation thereof;
- (e) contain any word or phrase that indicates or implies that it is incorporated for any object other than one or more of the objects set out in its articles;
- (f) contain any word or phrase or any abbreviation or derivation thereof, the use of which is prohibited or restricted under any other Act unless in the latter case the restrictions are complied with; or
- (g) in the opinion of the Minister, be objectionable on any public grounds.

(2) If a corporation through inadvertence or otherwise has acquired a name contrary to subsection 1, the Minister may, after he has given the corporation an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly. R.S.O. 1960, c. 71, s. 12 (1, 2), *amended*. Change of name if objectionable

(3) Where an undertaking referred to in clause *a* of subsection 1 is given by a corporation to which this Act applies and the undertaking is not carried out within the time specified, the Minister may, after giving the corporation an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly. Failure to perform undertaking

(4) Where an undertaking referred to in clause *a* of subsection 1 is given by a body corporate to which this Act does not apply or by an association, partnership or individual and the undertaking is not carried out within the time specified, the Minister may, after giving the corporation that acquired the name by virtue of such undertaking an opportunity to be heard, issue a certificate of amendment to the Idem

articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate, the articles are amended accordingly. *New.*

Change not  
to affect  
rights, etc.

**9.** A change in the name of a corporation does not affect its rights or obligations. R.S.O. 1960, c. 71, s. 13.

Unauthor-  
ized use of  
"Limited",  
etc.

**10.**—(1) No person, partnership or association while not incorporated shall trade or carry on a business or undertaking under a name in which "Limited", "Incorporated" or "Corporation" or any abbreviation thereof is used. R.S.O. 1960, c. 71, s. 14, *amended.*

Idem

(2) Where a corporation carries on business or identifies itself to the public in a name or style other than as provided in the articles, such name or style shall not include the word "Limited", "Incorporated" or "Corporation" or any abbreviation thereof. *New.*

Reservation  
of name

**11.**—(1) Any person may, on application in writing and on the payment of the prescribed fee, reserve a corporate name for the use and benefit of the applicant or his nominee for a period of sixty days or such lesser period as he specifies, if the name is at the time not contrary to section 8. R.S.O. 1960, c. 71, s. 15, *amended.*

Idem

(2) During the period for which a name has been reserved, no corporation shall acquire the name or a similar name without the consent in writing of the person for whose use and benefit the name has been reserved. *New.*

Notice  
of name

**12.** An individual, partnership or association may notify the Minister of the name under which his or its business or undertaking is carried on, and thereupon the Minister shall make a notation thereof in his records. R.S.O. 1960, c. 71, s. 16, *amended.*

#### SEAL AND HEAD OFFICE

Corporate  
seal

**13.**—(1) A corporation shall have a seal which shall be adopted and may be changed by resolution of the directors. R.S.O. 1960, c. 71, s. 292, *amended.*

Idem

(2) The name of the corporation shall appear in legible characters on the seal. *New.*

Head  
office

**14.**—(1) Subject to subsection 2, a corporation shall at all times have its head office at the place in Ontario where the articles provide that the head office is to be located.

Change of  
head office

(2) A corporation may by special by-law change the municipality or geographic township in which its head office is located to another place in Ontario. R.S.O. 1960, c. 71, s. 290 (1, 2), *amended.*



(3) Where the location of the head office of a corporation is changed by reason only of the annexation or amalgamation of the place in which the head office is located to or with another municipality, such change does not constitute and has never constituted a change within the meaning of subsection 2. 1964, c. 10, s. 6.

(4) The corporation shall, within ten days after a by-law passed under subsection 2 has been confirmed by the shareholders, file a certified copy of the by-law with the Minister. R.S.O. 1960, c. 71, s. 290 (3), *part, amended*.

(5) A corporation may by resolution of the directors change the location of its head office within a municipality or geographic township and shall, within ten days after the passing of the resolution, file with the Minister notice of the change giving the address including the street and number, if any, of the new location. *New*.

(6) Failure to comply with subsection 4 or 5 does not affect the validity of the by-law or resolution. R.S.O. 1960, c. 71, s. 290 (4), *part, amended*.

#### POWERS

##### *General*

**15.—(1)** Every corporation has power,

- (a) to have perpetual succession;
- (b) to contract and sue and be sued in its corporate name; and
- (c) to carry on business in or identify itself to the public by a name or style other than its corporate name. R.S.O. 1960, c. 191, s. 26 (a), *amended*.

(2) A corporation has power as incidental and ancillary to the objects set out in its articles,

- 1. to carry on any other business capable of being conveniently carried on in connection with its business or likely to enhance the value of or make profitable any of its property or rights;
- 2. to acquire or undertake the whole or any part of the business, property and liabilities of any person carrying on any business that the corporation is authorized to carry on;
- 3. to apply for, register, purchase, lease, acquire, hold, use, control, license, sell, assign or dispose of patents, patent rights, copyrights, trade marks, formulae, licences, inventions, processes, distinctive marks and similar rights;

4. to enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or body corporate carrying on or engaged in or about to carry on or engage in any business or transaction that the corporation is authorized to carry on or engage in or any business or transaction capable of being conducted so as to benefit the corporation;
5. to take or otherwise acquire and hold securities in any other body corporate having objects altogether or in part similar to those of the corporation or carrying on any business capable of being conducted so as to benefit the corporation;
6. to lend money to any other body corporate or any firm or person having dealings with the corporation or with whom the corporation proposes to have dealings or to any other body corporate any of whose shares are held by the corporation;
7. to apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege, that any government or authority or any body corporate or other public body may be empowered to grant, and to pay for, aid in and contribute toward carrying it into effect and to assume any liabilities or obligations incidental thereto;
8. to establish and support or aid in the establishment and support of associations, institutions, funds or trusts for the benefit of employees or former employees of the corporation or its predecessors, or the dependants or connections of such employees or former employees, and grant pensions and allowances, and make payments towards insurance or for any object similar to those set forth in this paragraph, and to subscribe or guarantee money for charitable, benevolent, educational or religious objects or for any exhibition or for any public, general or useful objects;
9. to promote any body corporate for the purpose of acquiring or taking over any of the property and liabilities of the body corporate or for any other purpose that may benefit the corporation;
10. to purchase, lease, take in exchange, hire or otherwise acquire any personal property and any rights or

privileges that the corporation considers necessary or convenient for the purposes of its business;

11. to construct, maintain and alter any buildings or works necessary or convenient for its objects;
12. to acquire by purchase, lease or otherwise and hold any land or interest therein necessary for its actual use and occupation or for carrying on its undertaking, and, when no longer necessary therefor, to sell, alienate or convey it;
13. to take, hold and alienate real and personal property that has in good faith been mortgaged to the corporation by way of security for, or conveyed to it in satisfaction of, debts previously contracted in the course of its business, or purchased at judicial sales upon levy for such indebtedness, or otherwise purchased for the purpose of avoiding a loss to the corporation;
14. to construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences that may advance the interests of the corporation, and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
15. to raise and assist in raising money for, and aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person or body corporate and guarantee the performance or fulfilment of any contracts or obligations of any person or body corporate, and in particular guarantee the payment of the principal of and interest on the debt obligations of any such person or body corporate.
16. to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable instruments;
17. where authorized to do so by a special resolution, to sell, lease, exchange or otherwise dispose of the undertaking of the corporation or any part thereof as an entirety or substantially as an entirety for such consideration as the corporation thinks fit;

18. to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with the property of the corporation in the ordinary course of its business;
19. to adopt such means of making known the products of the corporation as may seem expedient, and in particular by advertising, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes and rewards and making donations;
20. to cause the corporation to be registered and recognized in any foreign jurisdiction or any province or territory of Canada, and designate persons therein according to the laws of that foreign jurisdiction or that province or territory of Canada to represent the corporation and to accept service for and on behalf of the corporation of any process or suit;
21. to allot and issue fully-paid shares of the corporation in payment or part payment of any property purchased or otherwise acquired by the corporation or for any past services performed for the corporation;
22. to distribute among the shareholders of the corporation in cash, kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner deemed advisable, any property of the corporation, but not so as to decrease the capital of the corporation unless the distribution is made for the purpose of enabling the corporation to be dissolved or the distribution, apart from this paragraph, would be otherwise lawful;
23. to establish agencies and branches;
24. to take or hold mortgages, hypothecs, liens and charges to secure payment of the purchase price, or of any unpaid balance of the purchase price, of any part of the property of the corporation of whatsoever kind sold by the corporation, or for any money due to the corporation from purchasers and others and to sell or otherwise dispose of any such mortgage, hypothec, lien or charge;
25. to pay all costs and expenses of or incidental to the incorporation and organization of the corporation;
26. to invest and deal with the moneys of the corporation not immediately required for the objects of the corporation in such manner as may be determined;



27. to do any of the things authorized by this subsection and all things authorized by its articles as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;
28. to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the corporation,

except that the incidental and ancillary powers of a corporation incorporated under subsection 2 of section 3 are limited to those set out in paragraphs 7, 8, 11, 12, 16, 17, 18, 20, 22 and 25. R.S.O. 1960, c. 71, ss. 22 (1), 288, *amended*.

(3) Any of the powers set out in subsection 2 may be with- <sup>Limited by articles</sup> held or limited by the articles. R.S.O. 1960, c. 71, s. 22 (2), *amended*.

(4) Every corporation may exercise its powers beyond the <sup>Power to act outside Ontario</sup> boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights. R.S.O. 1960, c. 71, s. 287, *amended*.

**16.—**(1) No act of a corporation and no transfer of real <sup>Acting outside powers</sup> or personal property to or by a corporation, otherwise lawful, that is heretofore or hereafter done or made, is invalid by reason of the fact that the corporation was without capacity or power to do such act or make or receive such transfer, but such lack of capacity or power may be asserted,

- (a) in a proceeding against the corporation by a shareholder under subsection 2;
- (b) in a proceeding by the corporation, whether acting directly or through a receiver, liquidator, trustee or other legal representative or through shareholders in a representative capacity, against a director or officer or former director or officer of the corporation; or
- (c) as cause for the cancellation of the certificate of incorporation of the corporation under section 250.

(2) A shareholder of a corporation may apply to a court <sup>Restraining order</sup> of competent jurisdiction for an order to restrain the corporation from doing any act or transferring or receiving the transfer of real or personal property on the ground that the corporation lacks capacity or power for the purpose, and the court may, if it deems it to be just and equitable, grant an order prohibiting the corporation from doing the act or transferring or receiving the transfer of the real or personal property, but,

where the act or transfer sought to be restrained or prohibited is being or to be done or made under a contract to which the corporation is a party,

- (a) all the parties to the contract shall be parties to the proceeding;
- (b) the court in granting the order may set aside the contract and allow the corporation or other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the granting of the order and setting aside of the contract, other than anticipated profits from the contract. *New.*

Loans to  
shareholders,  
directors,  
etc.

**17.—**(1) Except as provided in subsection 2, a corporation shall not,

- (a) make loans to any of its shareholders, directors or employees; or
- (b) give, directly or indirectly, by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made by any person of any shares of the corporation.

Exceptions

(2) A corporation may,

- (a) make loans to any of its shareholders, directors or employees in the ordinary course of its business where the making of loans is part of the ordinary business of the corporation;
- (b) make loans to *bona fide* full-time employees of the corporation whether or not they are shareholders or directors, with a view to enabling them to purchase or erect dwelling houses for their own occupation, and may take from such employees mortgages or other security for the repayment of such loans;
- (c) provide, in accordance with a scheme for the time being in force, money by way of loan for the purchase of or subscription for shares of the corporation by trustees, to be held by or for the benefit of *bona fide* employees of the corporation, whether or not they are shareholders or directors; or
- (d) make loans to *bona fide* employees of the corporation, other than directors, whether or not they are shareholders, with a view to enabling them to purchase or subscribe for shares of the corporation to be held by them by way of beneficial ownership.

(3) The power mentioned in clause *b*, *c* or *d* of subsection 2 may be exercised only under the authority of a special by-law. <sup>By special by-law only</sup> R.S.O. 1960, c. 71, s. 23 (1, 2), *amended*.

### *Contracts*

**18.**—(1) A contract that if entered into by an individual person would be by law required to be in writing and under seal may be entered into on behalf of a corporation in writing under the seal of the corporation. <sup>Contracts in writing under seal</sup>

(2) A contract that if entered into by an individual person would be by law required to be in writing signed by the parties to be charged therewith may be entered into on behalf of a corporation in writing signed by any person acting under its authority, express or implied. <sup>Contracts in writing not under seal</sup>

(3) A contract that if entered into by an individual person would be by law valid although made by parol only and not reduced into writing may be entered into by parol on behalf of a corporation by any person acting under its authority, express or implied. R.S.O. 1960, c. 71, s. 293, *amended*. <sup>Parol contracts</sup>

**19.** A corporation may, by writing under seal, empower any person, either generally or in respect of any specified matters, to execute, as its attorney and on its behalf in any place within or outside Ontario, documents to which it is a party in any capacity and that are required by law to be under seal, and every document signed by such attorney on behalf of the corporation acting within the scope of his authority, express or implied, and under his seal binds the corporation and has the same effect as if it were under the seal of the corporation. R.S.O. 1960, c. 71, s. 294, *amended*. <sup>Power of attorney</sup>

**20.**—(1) In this section,

<sup>Interpretation</sup>

- (a) “contractor” means a person who enters into a pre-incorporation contract in the name of or on behalf of a corporation before its incorporation;
- (b) “other party” means a person with whom a contractor enters into a pre-incorporation contract;
- (c) “pre-incorporation contract” means a contract entered into by a contractor in the name of or on behalf of a corporation before its incorporation.

(2) A corporation may adopt a pre-incorporation contract entered into in its name or on its behalf, and thereupon the corporation is entitled to the benefits and is subject to the <sup>Adoption of pre-incorporation contracts</sup>

liabilities that were contracted in its name or on its behalf and the contractor ceases to be entitled to such benefits or to be subject to such liabilities.

Non-  
adoption  
of pre-  
incor-  
poration  
contracts

(3) Where a pre-incorporation contract is not adopted by a corporation, the contractor is entitled to the benefits and subject to the liabilities under the contract and is entitled to recover from the corporation the value of any benefit received by the corporation under the contract.

Application  
to court  
for relief

(4) Whether or not a pre-incorporation contract is adopted by the corporation, the other party may apply to the court which may, notwithstanding subsections 2 and 3, make an order fixing or apportioning liability as between the contractor and the corporation in any manner the court considers just and equitable under the circumstances. R.S.O. 1960, c. 71, s. 286, *amended*.

### *By-laws and Resolutions*

By-laws

**21.**—(1) The directors may pass by-laws not contrary to this Act or to the articles to regulate,

- (a) the allotment and issue of shares, the payment thereof, the issue of share certificates, the transfer and the registration of transfers of shares;
- (b) the declaration and payment of dividends;
- (c) the qualification and remuneration of the directors;
- (d) the time for and the manner of election of directors;
- (e) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (f) the time and place and the notice to be given for the holding of meetings of shareholders and of the board of directors, the quorum at meetings of shareholders, the requirements as to proxies, and the procedure in all things at shareholders' meetings and at meetings of the board of directors;
- (g) the conduct in all other particulars of the affairs of the corporation.



(2) Subject to section 22, a by-law passed under subsection 1 and a repeal, amendment or re-enactment thereof is effective from the time of its passing if it is confirmed, with or without variation, at a general meeting of the shareholders duly called for that purpose or at the next annual meeting of the shareholders, whichever is held first. <sup>Confirmation</sup>

(3) The shareholders may, at the general meeting or the annual meeting mentioned in subsection 2, confirm, reject, amend or otherwise deal with any by-law passed by the directors and submitted to the meeting for confirmation, but no act done or right acquired under any such by-law is prejudicially affected by any such rejection, amendment or other dealing. R.S.O. 1960, c. 71, s. 67 (1, 3), *amended*. <sup>Powers re confirmation</sup>

(4) Where a by-law or repeal, amendment or re-enactment thereof is not confirmed at a meeting as required by subsection 2, it has effect from the time of its passing until the meeting but not thereafter, and no subsequent by-law, repeal, amendment or re-enactment of the same or similar substance has any effect until it is confirmed at a general meeting of the shareholders duly called for that purpose. R.S.O. 1960, c. 71, s. 67 (2), *amended*. <sup>Rejection</sup>

**22.**—(1) A by-law relating to the remuneration of a director as director shall fix the remuneration and the period for which it is to be paid. *New*. <sup>Remuneration of directors</sup>

(2) A by-law passed under subsection 1 is not effective until it is confirmed at a general meeting of the shareholders duly called for that purpose. R.S.O. 1960, c. 71, s. 68. <sup>Confirmation</sup>

**23.**—(1) Any by-law or resolution consented to at any time during a corporation's existence by the signatures of all the directors is as valid and effective as if passed at a meeting of the directors duly called, constituted and held for that purpose. <sup>By-laws and resolutions</sup>

(2) Any resolution consented to at any time during a corporation's existence by the signatures of all the shareholders entitled to vote at a meeting of shareholders is as valid and effective as if passed at a meeting of the shareholders duly called, constituted and held for that purpose. <sup>Idem</sup>

(3) Any by-law or resolution passed by the directors at any time during a corporation's existence may, in lieu of confirmation at a general meeting of shareholders, be confirmed in writing by all the shareholders entitled to vote at such meeting. <sup>Alternative method of confirming by-laws</sup>

Evidentiary  
value of  
signatures

(4) Where a by-law or resolution purports to have been consented to or confirmed under this section by the signatures of all the directors or shareholders, as the case may be, of the corporation, the signatures to the by-law or resolution are admissible in evidence as *prima facie* proof of the signatures of the directors or shareholders, as the case may be, that they purport to represent and are admissible in evidence as *prima facie* proof that the signatories to the by-law or resolution were all the directors or all the shareholders entitled to vote at meetings of shareholders, as the case may be, at the date that the by-law or resolution purports so to have been consented to or confirmed. R.S.O. 1960, c. 71, s. 311, *amended*.

## SHARES

### *Authorized Capital*

Authorized  
capital

**24.**—(1) The authorized capital of a corporation shall be divided into shares with par value or without par value or both and may consist of shares of more than one class.

Par  
shares

(2) Where all the shares of a corporation are with par value, its authorized capital shall be expressed in Canadian or other currency in its articles, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of shares of each class multiplied by the par value thereof. R.S.O. 1960, c. 71, s. 24 (1, 2), *amended*.

No par  
shares

(3) Where all the shares of a corporation are without par value, its authorized capital shall be expressed in its articles as a specified number of shares.

No par  
and par  
shares

(4) Where part of the shares of a corporation are with par value and part are without par value, its authorized capital shall be expressed in its articles as a specified number of shares of each class of shares having a specified par value and a specified number of shares of each class of shares without par value. R.S.O. 1960, c. 71, s. 24 (3), *amended*.

Considera-  
tion for  
no par  
shares

**25.**—(1) Where all the shares of a corporation are without par value or where part of its shares are with par value and part are without par value, the articles may provide,

- (a) that each share without par value shall not be issued for a consideration; or
- (b) the shares of each class of shares without par value shall not be issued for an aggregate consideration,

exceeding in amount or value a stated amount in Canadian or other currency, and the articles may provide, in addition, that such share or shares may be issued for such greater amount as the board of directors of the corporation by resolution determines.

(2) A resolution referred to in subsection 1 is not effective until, Resolution increasing aggregate consideration for no par shares

(a) a certified copy thereof has been filed with the Minister;

(b) all prescribed fees have been paid; and

(c) the Minister has so certified. R.S.O. 1960, c. 71, s. 24 (4), *amended*.

**26.**—(1) The common shares of a corporation shall be shares to which there is attached no preference, right, condition, restriction, limitation or prohibition set out in the articles of the corporation, other than a restriction on the allotment, issue or transfer. Common shares

(2) Where a corporation has one class of shares, that class shall be common shares and designated as provided in the articles. *New.* Classes of shares

(3) Where a corporation has more than one class of shares, one class shall be common shares, designated as provided in the articles, and the other shares shall be special shares and may consist of one or more classes of special shares and shall have attached thereto the designations, preferences, rights, conditions, restrictions, limitations or prohibitions set out in the articles. Idem

(4) No class of special shares shall be designated as preference shares or by words of like import, unless that class has attached thereto a preference or right over the common shares. R.S.O. 1960, c. 71, s. 27 (1), *amended*. Preference shares

**27.**—(1) Each class of special shares may have attached to it preferences, rights, conditions, restrictions, limitations or prohibitions, including but not limited to, Special shares

(a) the right to cumulative, non-cumulative or partially cumulative dividends;

(b) a preference over any other class or classes of shares as to the payment of dividends;

- (c) a preference over any other class or classes of shares as to repayment of capital upon the dissolution of the corporation or otherwise;
- (d) the exclusive right to elect part of the board of directors;
- (e) the right to convert the shares of that class into shares of another class or classes of shares;
- (f) the right of the corporation at its option to redeem all or part of the shares of that class;
- (g) the purchase for cancellation by the corporation of all or part of the shares of that class by agreement with the holders thereof at the lowest price at which, in the opinion of the directors, such shares are obtainable, but not exceeding an amount stated in or determined by the articles;
- (h) conditions, restrictions, limitations or prohibitions on the right to vote at meetings of shareholders. R.S.O. 1960, c. 71, s. 27 (1, 2), *amended*.

Valuation  
of shares

(2) Any provision in the articles under clause *c* or *f* of subsection 1 shall set out the method by which the amount to be paid in respect of each share of the class is to be determined. *New*.

Equality  
of shares  
of a class

**28.** Except as provided in section 29, each share of a class shall be the same in all respects as every other share of that class. R.S.O. 1960, c. 71, s. 25.

Special  
shares in  
series

**29.—**(1) The articles of a corporation may authorize the issue from time to time in one or more series of the special shares of a class and may authorize the directors to fix from time to time before such issue the designation, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to the shares of each series of the class.

Voting  
rights

(2) The shares of all series of the same class of special shares shall carry the same voting rights or the same restrictions, conditions, limitations or prohibitions on the right to vote.

Proportionate  
abatement

(3) Where any dividends or amounts payable on a repayment of capital are not paid in full, the shares of all series of the same class of special shares shall participate rateably in respect of such dividends, including accumulations, if any,



in accordance with the sums that would be payable on such shares if all such dividends were declared and paid in full, and on any repayment of capital in accordance with the sums that would be payable on such repayment of capital if all sums so payable were paid in full. R.S.O. 1960, c. 71, s. 28 (1-3), *amended*.

**30.**—(1) The articles may set forth the designation, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the first series to be issued in which case the special shares of the first series may be issued in accordance with the articles. Provision for first series in articles

(2) A series, other than one to which subsection 1 applies, shall not be issued until, Conditions to issue of series

- (a) the directors have by resolution fixed the designation, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the special shares of the series; and
- (b) the statement referred to in section 31 has been filed with the Minister and the certificate of the Minister has been issued under section 31. R.S.O. 1960, c. 71, s. 28 (4, 5), *amended*.

**31.**—(1) For the purpose of bringing a resolution passed by the directors under subsection 2 of section 30 into effect the corporation shall deliver to the Minister, within six months after the resolution has been passed, a statement in duplicate executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation, and verified by affidavit of one of the officers or directors signing the statement, setting out, Filing of statement

- (a) the name of the corporation;
- (b) a certified copy of the resolution;
- (c) that the resolution was duly passed by the directors;
- (d) the date of the passing of the resolution; and
- (e) that the conditions, if any, contained in the articles or in any prior resolution precedent to the creation and issue of the shares of the series have been complied with.

(2) If the statement conforms to law, the Minister shall, when all prescribed fees have been paid, Issuance of certificate

- (a) endorse on each duplicate of the statement the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of the filing to which he shall affix the other duplicate.

Effect of  
certificate

(3) Upon the date set forth in the certificate of filing the resolution becomes effective and constitutes an amendment to the articles. *New.*

### *Issued Capital*

Issued  
capital,  
par value  
shares:

**32.**—(1) Where all the shares of a corporation are with par value, its issued capital shall be expressed in Canadian or other currency, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of issued shares of each class multiplied by the par value thereof less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act.

no par  
value  
shares, etc.

(2) Where the shares of a corporation are without par value or where part of its shares are with par value and part are without par value, its issued capital shall be expressed in Canadian or other currency, or partly in one currency and partly in another, and is an amount equal to the total of the products of the number of issued shares of each class with par value multiplied by the par value thereof, together with the amount of the consideration for which the shares without par value from time to time outstanding were issued and together with such amounts as from time to time by by-law of the corporation may be transferred thereto and less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act. R.S.O. 1960, c. 71, s. 30 (1, 2), *amended*.

Cancellation  
of par  
share:

**33.**—(1) Where an issued share of a class with par value is cancelled, the issued capital is decreased by an amount equal to the par value of the shares of that class. *New.*

of no par  
share

(2) Where an issued share of a class without par value is cancelled, the issued capital is decreased by an amount equal to the amount obtained by dividing,

- (a) that part of the issued capital attributable to that class of shares in accordance with subsection 2 of section 32,

by

- (b) the number of issued shares of that class. R.S.O. 1960, c. 71, s. 35, *amended*.

(3) Where a fraction of an issued share of a class is cancelled, the issued capital is decreased by an amount that bears the same proportion to the amount determined under subsection 1 or 2, as the case may be, that the fraction bears to a whole share of that class. *New*.

*Redemption, Purchase, Conversion and Surrender*

**34.**—(1) Where the shares of a class of special shares are made redeemable by the articles and part only of the special shares are to be redeemed, the shares to be redeemed shall be selected,

- (a) by lot in such manner as the board of directors determines;
- (b) as nearly as may be in proportion to the number of special shares of the class registered in the name of each shareholder; or
- (c) in such other manner as the board of directors determines with the consent of the holders of special shares of the class obtained in the manner set out in subsection 2,

but the articles may confine the manner of selection to that set out in clause *a* or in clause *b*.

(2) Where shares of a class of special shares are selected in the manner referred to in clause *c* of subsection 1, the selection shall be consented to in writing by,

- (a) all the holders of the special shares of the class; or
- (b) at least 95 per cent of the holders of the special shares of the class holding at least 95 per cent of the issued shares of that class if, after twenty-one days notice has been given by sending notice to each of the holders of shares of that class addressed to him at his latest address as shown on the records of the corporation, none of the holders of shares of that class dissents in writing to the corporation. R.S.O. 1960, c. 71, s. 27 (7, 8), *amended*.

(3) Where a holder of redeemable special shares of a corporation that is not offering its securities to the public dies or leaves its employment, notwithstanding subsection 1, it may within one year of such event redeem all or any of the special shares held by him. R.S.O. 1960, c. 71, s. 27 (9), *amended*.

Purchase of  
special  
shares for  
cancellation

**35.**—(1) Where the shares of a class of special shares are made purchasable for cancellation by the articles, then, except where the purchase is made on the open market or all the holders of the class consent to the purchase, the corporation may purchase the shares only pursuant to tenders received by the corporation upon request for tenders addressed to all the holders of the shares of the class, and the corporation shall accept only the lowest tenders. R.S.O. 1960, c. 71, s. 27 (11), *amended*.

Idem

(2) Where, in response to the invitation for tenders, two or more shareholders submit tenders at the same price and the tenders are accepted by the corporation as to part only of the shares offered, the corporation shall accept part of the shares offered in each tender in proportion as nearly as may be to the total number of shares offered in each tender. *New*.

Conversion  
of par  
shares to  
par shares

**36.**—(1) The articles of a corporation shall not provide for the conversion of shares with par value into shares with par value if the aggregate par value of the shares being converted is not equal to the aggregate par value of the shares into which they are converted.

par shares  
to no par  
shares

(2) Where, in accordance with the articles, shares with par value are converted into shares without par value, the issued capital of the corporation attributable to the shares resulting from the conversion shall be equal to the aggregate par value of the shares converted.

no par  
shares to  
par shares

(3) Where the articles provide for the conversion of shares without par value into shares with par value, no such share shall be converted unless that part of the issued capital attributable to the shares being converted is equal to the aggregate par value of the shares resulting from the conversion.

no par  
shares to  
no par  
shares

(4) Where, in accordance with the articles, shares without par value are converted into shares without par value, the issued capital shall remain unchanged. R.S.O. 1960, c. 71, s. 27 (15), *amended*.

of special  
shares

(5) Where special shares of a class are converted into the same or another number of shares of another class or classes, whether special or common, the shares converted thereupon become the same in all respects as the shares of the class or classes respectively into which they are converted, and the number of shares of each class affected by the conversion is changed and the articles are amended accordingly. R.S.O. 1960, c. 71, s. 27 (14).

Surrender  
of mutual  
fund shares

**37.**—(1) Where the only undertaking of a corporation is the business of investing the funds of the corporation, its articles may provide for the issuing of one or more classes of



mutual fund shares that have attached thereto conditions requiring the corporation to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof.

(2) Articles that provide for the issuing of mutual fund shares shall set out the conditions governing, Conditions and price

(a) the surrender of mutual fund shares or any fractions or parts thereof; and

(b) the determination of the price to be paid therefor and the manner and time of payment thereof. *New.*

**38.**—(1) A corporation shall not redeem or purchase special shares or accept mutual fund shares for surrender if the corporation is insolvent or if the redemption, purchase or surrender would render the corporation insolvent. Redemption purchase or surrender while insolvent

(2) Special shares that are redeemed or purchased by a corporation are thereby cancelled, and the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly. R.S.O. 1960, c. 71, s. 27 (12, 13), *amended*. Cancellation on redemption, purchase or surrender

(3) Where mutual fund shares are accepted for surrender by a corporation, the shares are not thereby cancelled, and the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. *New.* Idem: mutual funds

**39.**—(1) Where authorized in its articles and subject to any restrictions contained therein, a corporation may purchase any of its common shares out of surplus. Purchase of common shares out of surplus:

(2) A corporation may purchase any of its common shares out of issued capital if the purchase is made, out of capital

(a) for the purpose of eliminating fractions of shares; or

(b) for the purpose of collecting or compromising indebtedness to the corporation.

(3) A corporation shall not purchase common shares under subsection 1 or 2 if the corporation is insolvent or if the purchase would render the corporation insolvent. Purchase while insolvent

(4) No purchase of common shares shall be made under this section by a corporation unless the purchase is authorized by an express resolution of the board of directors. Authoriza-tion

Method

(5) Where a corporation purchases its common shares under this section, the purchase shall be made,

- (a) by invitation addressed to all shareholders for tenders of shares and *pro rata* from the shares so tendered; or
- (b) from *bona fide* full-time employees and former employees of the corporation; or
- (c) where the corporation is offering its shares to the public, by purchase on the open market. *New.*

Cancellation  
or resale

**40.**—(1) Where common shares are purchased by a corporation under subsection 1 of section 39,

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the corporation are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
  - (i) the board of directors may at the time of the purchase cancel the shares, in which case the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly; or
  - (ii) the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation.

Cancellation

(2) Common shares or fractions thereof purchased under subsection 2 of section 39 are thereby cancelled and the authorized and issued capital are thereby decreased and the articles are amended accordingly. *New.*

Corporation  
insider re  
purchase  
and resale  
of own  
shares

**41.** Where a corporation purchases common shares under subsection 1 of section 39 or resells them under subclause ii of clause *b* of subsection 1 of section 40, the corporation shall be deemed to be an insider in respect of the purchase or resale, and sections 148 to 152 apply to the purchase or resale. *New.*

Perform-  
ance of  
agreement  
to purchase  
common  
shares

**42.** An agreement for the purchase by a corporation of its common shares is not invalid or unenforceable because of the possibility that the corporation may not be able to comply with section 39, but such agreement is,

- (a) subject to subsection 2 of section 135, valid if performed; and

- (b) if not performed, valid and enforceable to the extent the corporation is able to purchase its common shares at the time for performance. *New.*

**43.**—(1) A corporation may accept from any shareholder a donation of any of its shares without any repayment of capital in respect thereof. <sup>Donation of shares</sup>

(2) Shares accepted under subsection 1 are not thereby cancelled, and the board of directors may sell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. <sup>Sale of donated shares</sup> *New.*

### *Allotment, Issue and Transfer*

**44.**—(1) In the absence of a provision to the contrary in the articles or by-laws of the corporation, shares may be allotted and issued at such times and in such manner and to such persons or class of persons as the directors determine. <sup>Issue of shares</sup>

(2) Shares with par value shall not be allotted or issued except for a consideration at least equal to the product of the number of shares allotted or issued multiplied by the par value thereof. <sup>Consideration for par shares</sup>

(3) Subject to section 25, shares without par value shall not be allotted or issued except for such consideration as is fixed by the directors. <sup>Consideration for no par shares</sup>

(4) No share shall be issued until it is fully paid and a share is not fully paid until all the consideration therefor in cash, property or services, as determined under this section, has been received by the corporation. <sup>Fully-paid shares</sup>

(5) For the purposes of subsection 4 and paragraph 21 of subsection 2 of section 15 a document evidencing indebtedness does not constitute property and services shall be past services actually performed for the corporation, and the value of property or services shall be the value the directors determine by express resolution to be in all the circumstances of the transaction the fair equivalent of the cash value. R.S.O. 1960, c. 71, s. 31, *amended.* <sup>Idem</sup>

**45.**—(1) A corporation may provide by special by-law for the payment of commissions or allowing discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the corporation, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares, but, except in the case of mining, gas or oil corporations or corporations at least 75 per cent of whose assets are of a wasting character, no such commission or discount shall exceed 25 per cent of the amount of the subscription price. <sup>Commission on sale of shares</sup>

No  
unauthorized  
commissions

(2) Except as provided in subsection 1, no corporation shall apply any of its shares or capital, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares of the corporation or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares, whether the shares or capital is so applied by being added to the purchase money of any property acquired by the corporation or to the contract price of any work to be executed for the corporation, or is paid out of the nominal purchase money or contract price or otherwise. R.S.O. 1960, c. 71, s. 32, *amended*.

Shares  
personal  
property

**46.** The shares of a corporation are personal property. R.S.O. 1960, c. 71, s. 38, *amended*.

Restrictions  
on transfer

**47.**—(1) A corporation shall not impose restrictions on the transfer of shares except such restrictions as are authorized by the articles. R.S.O. 1960, c. 71, s. 39 (1), *amended*.

No public  
offer if  
transfer  
restricted

(2) A corporation that has imposed restrictions on the transfer of its shares shall not offer its shares to the public unless the restrictions are necessary,

(a) by or under any Act of Canada or Ontario as a condition to the obtaining, holding or renewal of authority to engage in any activity necessary to its undertaking; or

(b) for the purpose of achieving or preserving its status as a Canadian corporation for the purpose of any Act of Canada or Ontario. *New*.

Lien for  
indebted-  
ness

(3) Except in the case of shares listed on a stock exchange recognized by the Commission, where the articles or by-laws so provide the corporation has a lien to the extent of the debt on the shares registered in the name of a shareholder who is indebted to the corporation. R.S.O. 1960, c. 71, s. 39 (3), *amended*.

Subsidiaries  
not to hold  
shares of  
holding  
corporations

**48.**—(1) Except in the cases mentioned in this section, a corporation shall not be a shareholder of a corporation that is its holding corporation, and any allotment or transfer of shares of a corporation to its subsidiary corporation is void.

Application

(2) This section does not apply to a subsidiary holding shares as personal representative unless the holding corporation or a subsidiary thereof is beneficially interested under a trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.



(3) This section does not prevent a subsidiary that on the 30th day of April, 1954, held shares of its holding corporation from continuing to hold such shares, but, subject to subsection 2, the subsidiary has no right to vote at meetings of shareholders of the holding corporation or at meetings of any class of shareholders thereof. Exception

(4) Subject to subsection 2, subsections 1 and 3 apply in relation to a nominee for a corporation that is a subsidiary as if the references in subsections 1 and 3 to such a corporation included references to a nominee for it. R.S.O. 1960, c. 71, s. 94. Nominees

### *Share Certificates*

**49.**—(1) Every shareholder is entitled to a share certificate in respect of the shares held by him, signed by the proper officers in accordance with the corporation's by-laws in that regard, but the corporation is not bound to issue more than one share certificate in respect of a share or shares held jointly by several persons, and delivery of a share certificate to one of several joint shareholders is sufficient delivery to all. Share certificates

(2) A corporation may charge a fee of not more than \$1 for every share certificate issued, except that, in the case of the allotment and issue of shares, no fee shall be charged. R.S.O. 1960, c. 71, s. 43 (1, 3). Fee

**50.** A share certificate shall be signed manually by at least one officer of the corporation or by or on behalf of a transfer agent or branch transfer agent of the corporation, and the corporation may by by-law provide that any additional signatures required on share certificates may be printed, engraved, lithographed or otherwise mechanically reproduced thereon, and in such event share certificates so signed are as valid as if they had been signed manually. R.S.O. 1960, c. 71, s. 46. Signing of share certificates

**51.**—(1) Every share certificate shall state upon its face, Contents of share certificates

- (a) the name of the corporation and the words "Incorporated under the law of the Province of Ontario" or words of like effect;
- (b) the name of the person to whom the share is issued as holder; and
- (c) the number and class of shares represented thereby and whether the shares are with par value or without par value and, if with par value, the par value thereof. R.S.O. 1960, c. 71, s. 45 (1), *amended*.

Statements  
on share  
certificates

(2) A share certificate issued for a share of a class of special shares shall,

- (a) legibly state on the certificate or have attached thereto a legible statement of the preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class of shares; or
- (b) legibly state on the certificate that there are preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class and that a copy of the full text thereof is obtainable on demand and without fee from the corporation.

Production  
of  
preferences,  
etc.

(3) Where a share certificate contains a statement as provided in clause *b* of subsection 2, the corporation shall furnish to the shareholder on demand without fee a copy of the full text of the preferences, rights, conditions, restrictions, prohibitions and limitations attaching to the share.

Lien on  
shares

(4) Where the articles or by-laws provide that a corporation has a lien on shares as authorized by subsection 3 of section 47, the right of the corporation to the lien shall be noted conspicuously on every share certificate issued by the corporation.

Transfer  
restricted

(5) A share certificate for a share the transfer of which is restricted in accordance with the articles shall have the restriction noted conspicuously on the certificate. *New.*

Fractional  
shares

**52.** Where, as a result of a change in the authorized capital of a corporation, a person becomes entitled to a fraction of a share, he is not entitled to be registered on the records of the corporation in respect thereof or to receive a share certificate therefor, but he is entitled to receive a bearer fractional certificate in respect of such fraction, and, on presentation at the head office of the corporation or at a place designated by the corporation of bearer fractional certificates for fractions that together represent a whole share, a share certificate for a whole share shall be issued in exchange therefor, and sections 63 to 97 apply thereto. R.S.O. 1960, c. 71, s. 37 (1, 2), *amended.*

#### BORROWING

Borrowing  
powers

**53.—**(1) When authorized by special by-law, the directors may,

- (a) borrow money on the credit of the corporation; or
- (b) issue, sell or pledge debt obligations of the corporation; or

- (c) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal, movable or immovable property of the corporation, including book debts, rights, powers, franchises and undertaking, to secure any debt obligations or any money borrowed, or other debt or liability of the corporation. R.S.O. 1960, c. 71, s. 58 (1), *amended*.

- (2) Any by-law referred to in subsection 1 may,

Contents  
of by-law

- (a) limit the amount to be borrowed as determined by the by-law; and
- (b) provide for the delegation by the directors of the powers conferred on them under the by-law to such directors or officers of the corporation and to such extent and manner as is set out in the by-law. *New*.

**54.** Nothing in this Act prohibits the issue of debt obligations in bearer form. *New*.

Bearer  
debt  
obligations

**55.** A condition contained in a debt obligation or in an instrument for securing a debt obligation is not invalid by reason only that the debt obligation is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long. R.S.O. 1960, c. 71, s. 59, *amended*.

Irredeem-  
able debt  
obligation

**56.**—(1) Where a corporation makes a charge, mortgage or other instrument of hypothecation or pledge to secure its debt obligations, the corporation shall, forthwith after the making thereof, file a duplicate original or certified copy of the instrument in the office of the Minister, but such filing may be made by any interested person. R.S.O. 1960, c. 71, s. 60 (1), *amended*.

Filing  
debt  
obligations

(2) Where the filing is by an interested person under subsection 1, that person is entitled to recover from the corporation the amount of any prescribed fee paid by him on such filing. *New*.

Recovery  
of fee

(3) Subsection 1 does not apply to a charge or mortgage filed with the Minister under *The Corporation Securities Registration Act*, or any other Act. R.S.O. 1960, c. 71, s. 60 (2).

Exception  
R.S.O. 1960,  
c. 70

### *Indenture Trustees*

- 57.**—(1) In this section and in sections 58 to 62,

Interpre-  
tation

- (a) “trust indenture” means any deed, indenture or document howsoever designated, including any supplement or amendment thereto, by the terms of

which a body corporate issues or guarantees debt obligations and in which a trustee is named as trustee for the holders of the debt obligations issued or guaranteed thereunder;

- (b) "trustee" means any person named as trustee under the terms of a trust indenture, whether or not the person is a trust company authorized to carry on business in Ontario. *New.*

Application  
of sections  
58 to 62

(2) This section and sections 58 to 62 shall apply to every body corporate, except corporations, offering their debt obligations to the public in Ontario under a trust indenture and to every corporation offering their debt obligations to the public under a trust indenture.

Resident  
trustee

(3) Every body corporate whose debt obligations are offered to the public in Ontario or issued under a trust indenture in Ontario shall have a trustee resident or authorized to do business in Ontario.

Statutory  
provisions  
in trust  
indentures

**58.**—(1) Trust indentures shall be deemed to contain the following provisions:

1. In the exercise of the rights, duties and obligations prescribed or conferred by the terms of the trust indenture, the trustee shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.
2. In the exercise of his rights, duties and obligations the trustee may, if he is acting in good faith, rely, as to the truth of the statements and the accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or other requirement of the trustee indenture or required by the trustee to be furnished to him in the exercise of his rights and duties under the trust indenture where,
  - (a) the statutory declarations, opinions, reports or certificates are furnished under subsection 1 of section 59, they comply with subsections 2 and 3 thereof; and
  - (b) the trustee examines the evidence furnished to him under section 59 in order to determine whether such evidence indicates compliance with the applicable requirements of the trust indenture.



3. The trustee shall be required to give to the holders of debt obligations issued under the trust indenture, within thirty days after the trustee becomes aware of the occurrence thereof, notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee in good faith determines that the withholding of such notice is in the best interests of the holders of the debt obligations and so advises the issuer in writing

(2) A person shall not be appointed a trustee under a trust indenture if a material conflict of interest exists in the trustee's role as a fiduciary thereunder at the time of the execution and delivery of the said trust indenture but if, notwithstanding the provisions of this section, such a material conflict of interest exists, the validity and enforceability of the said trust indenture, the security created thereby and thereunder and the securities issued thereunder shall not be affected in any manner whatsoever by reason only that such material conflict of interest exists but such trustee shall, within ninety days after ascertaining that he has such material conflict of interest, either eliminate such material conflict of interest or resign from office, and where a material conflict of interest arises subsequently to the appointment of the trustee under a trust indenture, he shall, within ninety days after ascertaining that he has such material conflict of interest, either eliminate such material conflict of interest or resign from office. *New.*

**59.**—(1) The issuer or guarantor of debt obligations issued under the trust indenture shall furnish to the trustee evidence of compliance with every covenant, condition or other requirement specified in the trust indenture to be furnished to the trustee or required by the trustee to be furnished to him in the exercise of his rights and duties under the trust indenture relating to,

- (a) the certification and delivery of debt obligations under the trust indenture;
- (b) the release or release and substitution of property subject to any mortgage, charge, lien or other encumbrance created by the trust indenture;
- (c) the satisfaction and discharge of the trust indenture;
- (d) the issuing of additional debt obligations thereunder; and

- (e) any other action or step required or permitted to be taken by the issuer, guarantor or trustee under the trust indenture or as a result of any obligation imposed by the trust indenture.

Idem

(2) Evidence of compliance referred to in clauses *a*, *b*, *c* and *d* of subsection 1 shall consist of,

- (a) statutory declarations made by officers of the issuer or guarantor authorized by the trust indenture stating that the covenant, condition or other requirement has been complied with in accordance with the terms of the trust indenture;
- (b) an opinion of a solicitor that the covenant, condition or other requirement has been complied with in accordance with the terms of the trust indenture; and
- (c) in the case of a covenant, condition or other requirement compliance with which is subject to the review or examination by auditors or accountants, an opinion or report of the auditor of the issuer or guarantor or any accountant licensed under *The Public Accountancy Act*, in each case approved by the trustee, as to the accuracy or reliability of the statements required to be reviewed or examined and whether or not the statements have been made in accordance with the terms of the trust indenture.

R.S.O. 1960,  
c. 317

Idem

(3) Evidence of compliance referred to in clause *e* of subsection 1, where it arises under a covenant, condition or other requirement of the trust indenture shall be in accordance with the report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him in accordance with the trust indenture, but if such report or opinion is provided by a director, officer or employee of the issuer or guarantor it shall be in the form of a statutory declaration.

Idem

(4) Evidence of compliance referred to in clause *e* of subsection 1, where it is required by the trustee to be furnished to him in the exercise of his rights and duties under the trust indenture shall be, so far as appropriate, in accordance with subsections 2 and 3.

Idem

(5) The evidence required under subsections 2, 3 and 4 shall include,

- (a) a statement by the person giving the evidence that he has read and is familiar with the provisions of the trust indenture under which it is required;
- (b) a brief statement of the nature and scope of the examination or investigation upon which the statements or opinions contained in the evidence are based;
- (c) a statement that, in the belief of the person giving the evidence, he has made such examination or investigation as is necessary to enable him to express an opinion whether the provisions of the trust indenture under which it is required have been complied with or satisfied; and
- (d) a statement whether in the opinion of such person the provisions of the trust indenture have been complied with or satisfied.

(6) The issuer or guarantor of debt obligations under the trust indenture shall furnish the trustee annually, and at any other time if the trustee so requires, a certificate that the issuer or guarantor has complied with all covenants, conditions or other requirements contained in the trust indenture that would, with the elapse of time or otherwise, constitute an event of default thereunder. Certificate of issuer or guarantor

(7) Nothing in this section prevents the inclusion in a trust indenture of provisions requiring evidence of compliance with covenants, conditions or other requirements in addition to those specified in this section. *New.* Additional provisions

**60.** Except as provided in paragraphs 1 and 2 of subsection 1 of section 58, a trust indenture to which section 58 applies shall not contain any provision relieving the trustee from liability arising thereunder and any such provision that is contained in a trust indenture is ineffective. *New.* Exculpatory clauses

**61.** A trustee under a trust indenture to which section 58 applies and any related person to such trustee shall not be appointed a receiver or receiver and manager or liquidator of the assets or undertaking of the issuer or guarantor of the debt obligations under the trust indenture. *New.* Trustees under trust indentures not to be appointed receivers, etc.

**62.** Sections 58, 59 and 60 apply to any trust indenture entered into after those sections come into force, or entered into before those sections come into force and under which debt obligations are outstanding or may be issued when those sections come into force. *New.* Application of sections 58-60

## INVESTMENT SECURITIES

*General*Interpre-  
tation**63.**—(1) In this section and in sections 64 to 97,

- (a) “adverse claim” includes a claim that a transfer is or would be unauthorized or wrongful or that a particular adverse person is the owner of or has an interest in the security;
- (b) “appropriate person”, when used to refer to a person endorsing a security, means,
  - (i) the person specified by the security or by special endorsement to be entitled to the security,
  - (ii) where the person so specified is described as a trustee or other fiduciary but is no longer serving in that capacity and notwithstanding that a successor has been appointed or qualified,
    - a. where only one person is so described, that person or his successor, or
    - b. where more than one person is so described, the remaining persons,
  - (iii) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise, his executor, administrator, committee, guardian or like fiduciary,
  - (iv) where the security or endorsement specified more than one person as joint tenants or with right of survivorship and by reason of death all cannot sign, the survivor or survivors,
  - (v) a person having the power to sign under the applicable law or controlling instrument, or
  - (vi) to the extent any of the foregoing persons may act through an agent, his authorized agent;
- (c) “bearer form” when applied to a security means a security that runs to bearer according to its terms and not by reason of any endorsement;



- (d) "broker" means a person engaged for all or part of his time in the business of buying and selling securities, who holds registration as a broker or in a similar capacity under *The Securities Act, 1966*, or <sup>1966, c. 142</sup> who is recognized for the purpose of sections 64 to 97 by the Commission as a broker, and who in the transaction concerned acts for or buys a security from or sells a security to a customer;
- (e) "clearing corporation" means a body corporate recognized as a clearing corporation by the Commission;
- (f) "custodian" means a bank to which the *Bank Act* <sup>1966-67, c. 87 (Can.)</sup> (Canada) applies, a trust company registered under *The Loan and Trust Corporations Act* or such other <sup>R.S.O. 1960 c. 222</sup> body corporate as may be recognized by the Commission as a custodian and which is acting as custodian for a clearing corporation;
- (g) "proper form" means regular on its face with regard to all formal matters;
- (h) "registered form" when applied to a security means a security that is not in bearer form and that specifies a person entitled to the security or the rights it evidences;
- (i) "security" means a security as defined in section 1 and includes a warrant.

(2) Sections 64 to 97 do not apply to a promissory note or bill of exchange to which the *Bills of Exchange Act* (Canada) <sup>Application of ss. 64-97 R.S.C. 1952, c. 15 (Can.)</sup> applies. *New.*

**64.** A lien upon a security in favour of an issuer thereof <sup>Issuer's liens</sup> is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security. *New.*

**65.**—(1) In this section, "overissue" means the issue of <sup>Overissue</sup> securities in excess of the amount which the issuer has corporate power to issue.

(2) The provisions of this Act that validate a security or <sup>Idem</sup> compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue, but,

- (a) if an identical security that does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the

issuer to purchase and deliver such a security to him against surrender of the security, if any, that he holds; or

- (b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand. *New.*

Evidence

**66.** In any action on a security,

- (a) unless specifically denied in the pleadings, each signature on the security or in a necessary endorsement is admitted;
- (b) where the effectiveness of a signature is put in issue, the burden of establishing its effectiveness is on the party claiming under the signature, but the signature is *prima facie* proof that it is genuine and authorized;
- (c) where signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defence or a defect going to the validity of the security; and
- (d) after it is shown that a defence or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defence or defect is ineffective. *New.*

Selection  
of laws

**67.—**(1) The validity of a security and the rights and duties with respect to registration of transfer of an issuer that is a corporation or a body corporate incorporated under the laws of Ontario are governed by this Act and the laws of Ontario.

Idem

(2) The validity of a security and the rights and duties with respect to registration of transfer of an issuer that is a body corporate other than a corporation or a body corporate under the laws of Ontario, are governed by the law, including the conflict of law rules, of the jurisdiction in which the body corporate was incorporated. *New.*

Form of  
transfer

**68.—**(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him in blank or to bearer.

(2) Where the buyer fails to pay the price as it comes due <sup>Default in payment</sup> under a contract of sale, the seller may recover the price,

- (a) of any security accepted by the buyer; and
- (b) if a security is not accepted by the buyer and its resale would be unduly burdensome or there is no readily available market. *New.*

*Rights and Liabilities of Issuer,  
Registrar and Transfer Agent*

**69.**—(1) The obligations and defences of an issuer apply <sup>Issuer</sup> to a body corporate that,

- (a) places or authorizes the placing of its name on a security, otherwise than as an authenticating trustee, registrar or transfer agent, to evidence that it represents a share, participation or other interest in its property or in an enterprise or to evidence its duty to perform an obligation evidenced by the security;
- (b) directly or indirectly creates fractional interests in its rights or property which fractional interests are evidenced by securities; or
- (c) becomes responsible for or in place of any other person described as an issuer in this section.

(2) The obligations and defences of an issuer apply to a <sup>Guarantor</sup> guarantor of a security to the extent of his guaranty whether or not his obligation is noted on the security.

(3) The person on whose behalf a register of transfers is <sup>Person maintaining transfer books</sup> maintained is an issuer for the purposes of the registration of a transfer under sections 92 to 95. *New.*

**70.**—(1) A purchaser for value shall be deemed to have <sup>Notice of terms on security</sup> notice of the terms of a security including those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a statute, ordinance, rule, regulation, order or other written law to the extent that the terms so referred to do not conflict with the stated terms, except that he shall be deemed not to have such notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) Except as otherwise provided in the case of certain <sup>Defence of issuer</sup> unauthorized signatures on issue, lack of genuineness of a security is a complete defence even against a purchaser for value and without notice.

Idem

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects. *New.*

*Rights and Liabilities of Purchaser and Seller*

Rights  
acquired by  
purchasers

**77.**—(1) Upon delivery of a security, the purchaser acquires the rights in the security that his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later purchaser for value in good faith who was without notice of any adverse claim.

*bona fide*  
purchaser

(2) A purchaser for value in good faith and without notice of any adverse claim in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

Limited  
interest

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased. *New.*

Notice of  
adverse  
claims

**78.**—(1) A purchaser, including a broker for the seller or buyer, of a security is charged with notice of adverse claims if,

- (a) the security whether in bearer or registered form has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
- (b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on a security shall not be deemed such a statement.

Idem

(2) The fact that the purchaser, including a broker for the seller or the buyer, has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims, but if the purchaser has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

Idem

(3) An act or event that creates a right to immediate performance of the principal obligation evidenced by the security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase,



- (a) after one year from any date set for such presentment or surrender for redemption or exchange; or
- (b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date. *New.*

**79.**—(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange, but a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature in a necessary endorsement. Warranties  
on  
presentment

(2) A person by transferring a security to a purchaser for value warrants only that, Warranties  
on transfer

- (a) his transfer is effective and rightful;
- (b) the security is genuine and has not been materially altered; and
- (c) he knows no fact that might impair the validity of the security.

(3) Where a security is delivered by an intermediary known by the transferee to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery, but a broker is not an intermediary within the meaning of this subsection. Warranties  
of inter-  
mediary

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection 3. Warranties  
of pledgee

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section and the warranties of and in favour of the broker acting as an agent are in addition to applicable warranties given by and in favour of his customer. *New.* Warranties  
of broker

Absence of  
endorsement

**80.** Where a security in registered form has been delivered to a purchaser without a necessary endorsement, he may become a purchaser for value in good faith and without notice of any adverse claim only as of the time the endorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied. *New.*

Endorse-  
ment

**81.**—(1) An endorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

Idem

(2) An endorsement of a security may be,

(a) in blank, including to bearer; or

(b) a special endorsement, specifying the person to whom the security is to be transferred or who has the power to transfer it,

and a holder may convert an endorsement in blank into a special endorsement.

Obligations  
of endorser

(3) Unless otherwise agreed, the endorser by his endorsement assumes no obligation that the security will be honoured by the issuer.

Partial  
endorsement

(4) An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

Appropriate  
person

(5) Whether the person signing is appropriate shall be determined as of the date of signing and an endorsement by such person does not become unauthorized for the purposes of this Act by virtue of any subsequent change of circumstances.

Improper  
endorsement  
by fiduciary

(6) Failure of a fiduciary to comply with a controlling instrument or with the law applicable to the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his endorsement unauthorized for the purposes of this Act. *New.*

Delivery  
necessary

**82.** An endorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears, or if the endorsement is on a separate document until the delivery of both the document and the security. *New.*

**83.** Unless the owner has ratified an unauthorized endorsement or is otherwise precluded from asserting its ineffectiveness, Effect of unauthorized endorsement

- (a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered security on registration of transfer; and
- (b) an issuer who registers the transfer of a security upon the unauthorized endorsement is subject to liability for improper registration. *New.*

**84.—**(1) Any person guaranteeing a signature of an endorser of a security warrants that at the time of signing, Guarantee of signature

- (a) the signature was genuine;
- (b) the signer was an appropriate person to endorse; and
- (c) the signer had legal capacity to sign,

but the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an endorsement of a security and by so doing warrants not only the signature but also the rightfulness of the particular transfer in all respects. Guarantee of endorsement

(3) No issuer may require a guarantee of endorsement as a condition to registration of transfer. Idem

(4) The warranties referred to in subsections 1 and 2 are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties. Liability of guarantor  
*New.*

**85.—**(1) Delivery to a purchaser occurs when, What constitutes delivery

- (a) he or a person designated by him acquires possession of a security;
- (b) his broker acquires possession of a security specially endorsed or issued in the name of the purchaser;
- (c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser;

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries in the records of a clearing corporation are made under section 91.

*Idem*

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in clauses *b*, *c* and *e* of subsection 1, but where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

Notice of  
adverse  
claim  
after  
delivery

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser, but as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.  
*New.*

Duty of  
seller to  
deliver

**86.**—(1) Unless otherwise agreed where a sale of a security is made on a stock exchange recognized for the purposes of sections 64 to 97 by the Commission or otherwise through brokers,

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or, if requested, causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the recognized stock exchange on which the transaction took place.

*Idem*

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him.



(3) Subsection 2 applies to a sale to a broker purchasing <sup>Idem</sup> on his own account unless the sale is made on a recognized stock exchange. *New.*

**87.**—(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, <sup>Action for wrongful transfer</sup> may against anyone else except a purchaser for value in good faith and without notice of any adverse claim reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized <sup>Idem</sup> endorsement the owner may also reclaim or obtain possession of the security even from a purchaser for value in good faith and without notice of any adverse claim if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this Act relating to unauthorized endorsements.

(3) The right to obtain or reclaim possession of a security <sup>Specific performance and injunction</sup> may be specially enforced by specific performance or its transfer enjoined. *New.*

**88.**—(1) Unless otherwise agreed, the transferor shall on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite that may be necessary to obtain registration of the transfer of the security, but <sup>Transferor's duty to provide requisites for registration of transfer</sup> if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses.

(2) Failure to comply with a demand made under subsection 1 within a reasonable time gives the purchaser the right to reject or rescind the transfer. <sup>Effect of failure</sup> *New.*

**89.** An agent or bailee who in good faith, including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities, has <sup>Transfer by agent in good faith not conversion</sup> received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal has no right to dispose of them. *New.*

**90.** A contract for the sale of securities is not enforceable <sup>Contract for sale</sup> by way of action or defence unless,

- (a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

- (b) delivery of the security has been accepted or payment has been made, but the contract is enforceable under this provision only to the extent of such delivery or payment;
- (c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under clause *a* has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within a reasonable time after its receipt; or
- (d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

Transfer  
through  
clearing  
corporation

**91.—(1)** If a security,

- (a) is in the custody of a clearing corporation or of a custodian or nominee of either, subject to the instructions of the clearing corporation;
- (b) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian or a nominee of either; and
- (c) is shown on the account of a transferor or pledgor in the records of the clearing corporation,

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries in the records of the clearing corporation, reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

Interests in  
fungible  
bulk

(2) Under this section entries may be in respect of like securities or interests therein as part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

Constructive  
endorsement  
and  
delivery

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank representing the amount of the obligation or the number of shares or rights transferred or pledged.

(4) If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party. <sup>Idem</sup>

(5) A transferee or pledgee under this section is a holder. <sup>Holder</sup>

(6) A transfer or pledge under this section does not constitute a registration of transfer under sections 92 to 96. <sup>Not registration</sup>

(7) That entries made in the records of the clearing corporation as provided in subsection 1 are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby. <sup>Error in records</sup> *New.*

### *Registration*

**92.**—(1) Where a security in registered form is presented to the issuer with a request to register a transfer, the issuer is under a duty to register the transfer as requested if, <sup>Duty of issuer to register transfer</sup>

- (a) the security is endorsed by the appropriate person or persons;
- (b) reasonable assurance is given that those endorsements are genuine and effective;
- (c) the issuer has no notice of an adverse claim;
- (d) any applicable law relating to the collection of taxes has been complied with; and
- (e) the transfer is not contrary to applicable restrictions or is not of a share in respect of which the corporation is entitled to a lien and exercises its right to refuse registration.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer. <sup>Liability for undue delay</sup> *New.*

**93.**—(1) For the purpose of obtaining reasonable assurance that each necessary endorsement required by section 81 is genuine and effective, the issuer may require a guarantee of the signature of the person endorsing or, where such guarantee is lacking, <sup>Assurances required by issuer</sup>

- (a) where the endorsement is by an agent, appropriate assurance of authority to sign;

- (b) where the endorsement is by fiduciary, or a successor on whom title or control vests on the death of the holder, appropriate evidence of appointment or incumbency;
- (c) where there is more than one fiduciary or successor, reasonable assurance that all who are required to sign have done so; and
- (d) where the endorsement is by a person not covered by a person mentioned in this section, assurance appropriate to the case equivalent as nearly as may be to those required by this section.

Sufficiency  
of guarantee

(2) A "guarantee of the signature" in subsection 1 means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible, and the issuer may adopt standards with respect to responsibility if such standards are not manifestly unreasonable. *New.*

Appropriate  
evidence of  
appoint-  
ment or  
incumbency

(3) For the purposes of subsection 1, "appropriate evidence of appointment or incumbency" means,

- (a) if the fiduciary or successor claims by virtue of a grant of probate or letters of administration or other instrument issued or purporting to be issued by a court or other judicial authority in any jurisdiction, production of the same or a notarial copy thereof or extract therefrom or a certificate of such grant under the seal of such court or other authority without any proof of the authenticity of such seal or other proof whatever and deposit of a copy thereof;
- (b) if the fiduciary or successor claims by virtue of the laws of any jurisdiction in which any transmission or vesting of title or control takes place without a grant of probate or letters of administration or other court or judicial action, production and deposit of proof thereof in accordance with the laws of such jurisdiction and reasonable evidence of such laws; or
- (c) if the net value of the estate of the deceased holder is less than \$1,500 or if the market value of the shares or securities is less than \$300, proof thereof to the reasonable satisfaction of the issuer,

together with, in any such event, production and deposit by one or more of the fiduciaries or successors of a sworn statement showing the nature of the transmission or vesting of title or control, as the case may be. R.S.O. 1960, c. 71, s. 52, *amended.*



(4) The issuer is not charged with notice of the contents of any document obtained for the purposes of subsection 3 except to the extent that the contents relate directly to the appointment or incumbency. *New.* Other contents not notice

**94.**—(1) An issuer to whom a security is presented for registration has notice of an adverse claim if, Notice to issuer of adverse claims

- (a) the issuer receives written notice of the adverse claim evidenced by an order or judgment of a court of competent jurisdiction and the notice is received at a time and in a manner that affords the issuer a reasonable opportunity to act on it before the issuance of a new, reissued or reregistered security and the notification identifies the registered owner, the claimant and the issue of which the security is a part, and provides an address for communications directed to the claimant; or
- (b) the issuer is given written notice by the registered owner that the security is lost, apparently destroyed or wrongfully taken.

(2) An issuer shall not be deemed to have notice of an adverse claim otherwise than as provided in subsection 1. Idem

(3) The issuer may register a transfer where he has notice of an adverse claim if he has given notice to both the registered owner and the claimant by registered mail to the address provided by them for the purpose that the security has been presented for registration by a named person and that the transfer will be registered unless prior to the expiration of thirty days from the date of mailing the notification there is filed with the issuer, Registration after notice

- (a) an appropriate restraining order, injunction or other process issued from a court of competent jurisdiction; or
- (b) an indemnity bond sufficient in the issuer's opinion to protect the issuer and any transfer agent, registrar or other agent of the issuer from any loss which it or they may suffer by complying with the adverse claim. *New.*

**95.**—(1) The issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if, Liability of issuer

- (a) there were on or with the security the necessary endorsements; and

- (b) the issuer had not notice of adverse claims or, having had notice thereof, proceeded to register the transfer in accordance with subsection 3 of section 94.

Idem

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless,

- (a) the registration was pursuant to subsection 1;
- (b) the owner is precluded from asserting any claim for registering the transfer under subsection 1 of section 96; or
- (c) such delivery would result in overissue, in which case the issuer's liability is governed by section 65. *New.*

Lost, etc., securities

**96.**—(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact in writing before the issuer registers a transfer of the security, the owner is precluded from asserting against the issuer any claim for registering the transfer under section 95 or any claim to a new security under this section.

Replacing lost, etc., securities

(2) Where the owner of a security claims that the security has been lost, apparently destroyed or wrongfully taken, the issuer shall issue a new security in place of the original security if the owner,

- (a) so requests before the issuer has notice that the security has been acquired by a purchaser for value without notice of an adverse claim;
- (b) files with the issuer an indemnity bond sufficient in the issuer's opinion to protect the issuer and any transfer agent, registrar or other agent of the issuer from any loss that it or they may suffer by complying with the request to issue a new security;
- (c) satisfies any other reasonable requirements imposed by the issuer.

Rights of bona fide purchaser

(3) If, after the issue of the new security, a purchaser for value without notice of an adverse claim of the original security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue in which event the issuer's liability is governed by section 65.

Rights of issuer

(4) In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom

it was issued or any person taking under him except a purchaser for value without notice of an adverse claim. *New.*

**97.**—(1) A person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities is under a duty to exercise good faith and due diligence in performing his functions. Duty of agents for issuer

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent. *New.* Notice to agents for issuer

## SHAREHOLDERS

### *Rights*

**98.**—(1) Where a person is shown on the records of a corporation as holding a share as a personal representative, the receipt by such person is a valid and binding discharge to the corporation for any payment made in respect of the share whether notice of any trust has been given to the corporation or not, and the corporation is not bound to see to the application of the money paid to him. R.S.O. 1960, c. 71, s. 47 (2, 3), *amended.* Dealings by corporation with personal representatives

(2) Where shares are purchased by a corporation under subsection 1 of section 39 or subsection 2 of section 100 or accepted by a corporation under subsection 3 of section 38 or section 43 and are not thereby cancelled, no person is entitled to receive notice of or to vote at meetings of shareholders or to receive any payment in respect of the shares whether by way of dividend or otherwise until such shares are resold. *New.* Corporation not a shareholder of own shares

**99.**—(1) Subject to subsection 2, a shareholder of a corporation may maintain an action in a representative capacity for himself and all other shareholders of the corporation suing for and on behalf of the corporation to enforce any right, duty or obligation owed to the corporation under this Act or under any other statute or rule of law or equity that could be enforced by the corporation itself, or to obtain damages for any breach of any such right, duty or obligation. Representative actions on behalf of corporation

(2) An action under subsection 1 shall not be commenced until the shareholder has obtained an order of the court permitting the shareholder to commence the action. Leave

(3) A shareholder may, upon at least seven days notice to the corporation, apply to the court for an order referred to in subsection 2, and, if the court is satisfied that, Application for order to commence action

- (a) the shareholder was a shareholder of the corporation at the time of the transaction or other event giving rise to the cause of action;
- (b) the shareholder has made reasonable efforts to cause the corporation to commence or prosecute diligently the action on its own behalf; and
- (c) the shareholder is acting in good faith and it is *prima facie* in the interests of the corporation or its shareholders that the action be commenced,

the court may make the order upon such terms as the court thinks fit, except that the order shall not require the shareholder to give security for costs.

Application  
for order  
for interim  
costs

(4) At any time or from time to time while an action commenced under this section is pending, the plaintiff may apply to the court for an order for the payment to the plaintiff by the corporation of reasonable interim costs, including solicitor's and counsel fees and disbursements, for which interim costs the plaintiff shall be accountable to the corporation if the action is dismissed with costs on final disposition at the trial or on appeal.

Trial and  
judgment

(5) An action commenced under this section shall be tried by the court and its judgment or order in the cause, unless the action is dismissed with costs, may include a provision that the reasonable costs of the action are payable to the plaintiff by the corporation or other defendants taxed as between a solicitor and his own client.

Discon-  
tinuance  
and  
settlement

(6) An action commenced under this section shall not be discontinued, settled or dismissed for want of prosecution without the approval of the court and, if the court determines that the interests of the shareholders or any class thereof may be substantially affected by such discontinuance, settlement or dismissal, the court, in its discretion, may direct that notice in manner, form and content satisfactory to the court shall be given, at the expense of the corporation or any other party to the action as the court directs, to the shareholders or class thereof whose interests the court determines will be so affected.

*New.*

Rights of  
dissenting  
shareholders

**100.—**(1) If, at a meeting of shareholders or of any class of shareholders of a corporation that is not offering its shares to the public,

- (a) a resolution passed by the directors authorizing the sale, lease, exchange or other disposition of the undertaking of the corporation or any part thereof as an



entirety or substantially as an entirety is confirmed with or without variation by the shareholders;

- (b) a resolution passed by the directors authorizing an amendment to the articles to delete therefrom a provision restricting the transfer of the shares of the corporation or of any class thereof is confirmed with or without variation by the shareholders; or
- (c) a resolution approving an agreement for the amalgamation of the corporation with one or more other corporations, is confirmed by the shareholders,

any shareholder who has voted against the confirmation of the resolution may within ten days after the date of the meeting give notice in writing to the corporation requiring it to purchase his shares.

(2) Within ninety days from the date of the completion of the sale or disposition or the issue of the certificate of amendment or amalgamation, as the case may be, the corporation, or amalgamated corporation, as the case may be, shall purchase the shares of every shareholder who has given notice under subsection 1, and every such shareholder shall sell his shares to the corporation. <sup>Corporation bound to purchase shares</sup>

(3) The corporation shall not purchase any shares under subsection 2 if it is insolvent or if the purchase would render it insolvent. <sup>Saving</sup>

(4) The price and terms of the purchase of such shares shall be as may be agreed upon by the corporation and the dissenting shareholder, but, if they fail to agree, the price and terms shall be as determined by the court on the application of the dissenting shareholder. <sup>Price of shares</sup>

(5) Any shares purchased under subsection 2 shall not be cancelled by reason only of such purchase and the board of directors may resell the shares at such time and price and on such terms as it determines, in which case the amount received from the sale shall form part of the surplus of the corporation. <sup>Sale of shares</sup>

(6) If the sale or disposition is not completed or the certificate of amendment or amalgamation is not issued, the rights of the dissenting shareholder under this section cease and the corporation shall not purchase the shares of such shareholder under this section. R.S.O. 1960, c. 71, s. 99, *amended*. <sup>Where sale not completed</sup>

Requisition for by-law or resolution	<p><b>101.</b>—(1) The persons holding equity shares carrying at least 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding may requisition the directors to call a meeting of the directors for the purpose of passing any by-law or resolution that may properly be passed at a meeting of the directors duly called, constituted and held for that purpose.</p>
Form of requisition	<p>(2) The requisition shall set out the by-law or resolution, as the case may be, that is required to be passed at the meeting and shall be signed by the requisitionists and deposited at the head office of the corporation, and may consist of several documents in like form, each signed by one or more requisitionists.</p>
Meeting of directors	<p>(3) Upon deposit of the requisition, the directors shall forthwith call a meeting of the directors for the purpose of passing the by-law or resolution, as the case may be, set out in the requisition.</p>
Meeting of shareholders	<p>(4) Where the directors do not within twenty-one days from the date of the deposit of the requisition,</p> <ul style="list-style-type: none"> <li>(a) call and hold such a meeting and pass such a by-law or resolution; and</li> <li>(b) if the by-law or resolution requires confirmation at a general meeting of the shareholders, call a general meeting of the shareholders for the purpose of confirming the by-law or resolution,</li> </ul> <p>any of the requisitionists may call a general meeting of the shareholders for the purpose of passing such by-law or resolution, and the meeting shall be held within sixty days from the date of the deposit of the requisition.</p>
Notice	<p>(5) A meeting of the shareholders called under subsection 4 shall be called as nearly as possible in the same manner as meetings of shareholders are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.</p>
Validity of by-law or resolution	<p>(6) Where a by-law or resolution is passed at a meeting of the shareholders called under subsection 4, either as set out in the requisition or as varied at the meeting, it is as valid and effective as if it had been passed at a meeting of the directors duly called, constituted and held for that purpose and confirmed at a meeting of the shareholders duly called, constituted and held for that purpose, and, if the resolution or by-law is passed by at least two-thirds of the votes cast at the meeting of the shareholders called under</p>

subsection 4, it shall be conclusively deemed to be a special resolution or special by-law, as the case may be, for the purposes of this Act.

(7) The corporation shall,

Repayment  
of expenses

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the failure of the directors to act in accordance with subsections 3 and 4; and
- (b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting called under subsection 4, the shareholders, by a majority of the votes cast, reject the reimbursement of the requisitionists.

(8) Where a by-law or resolution in respect of which a meeting is required by requisition under this section is not passed at the meeting, no requisition for a meeting in respect of a similar by-law or resolution shall be made for a period of at least two years. *New.*

New  
requisition  
on same  
subject

**102.**—(1) On the requisition in writing of the persons holding equity shares carrying at least 5 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, the directors shall,

Circulation  
of share-  
holders'  
resolutions,  
etc.

- (a) give to the shareholders entitled to notice of the next meeting of shareholders notice of any resolution that may properly be moved and is intended to be moved at that meeting; or
- (b) circulate to the shareholders entitled to vote at the next meeting of shareholders a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or with respect to the business to be dealt with at that meeting.

(2) The notice or statement or both, as the case may be, shall be given or circulated by sending a copy thereof to each shareholder entitled thereto in the same manner and at the same time as that prescribed by this Act, the articles or the by-laws, for the sending of notice of meetings of shareholders.

Notice

(3) Where it is not practicable to send the notice or statement or both at the same time as the notice of the meeting is sent, the notice or statement or both shall be sent as soon as practicable thereafter.

Idem

Deposit of  
requisition,  
etc.

(4) The directors are not bound under this section to give notice of any resolution or to circulate any statement unless,

(a) the requisition, signed by the requisitionists, is deposited at the head office of the corporation,

(i) in the case of a requisition requiring notice of a resolution to be given, not less than twenty-one days before the meeting where the corporation is offering its securities to the public and not less than ten days before the meeting where the corporation is not offering its securities to the public,

(ii) in the case of a requisition requiring a statement to be circulated, not less than fourteen days before the meeting where the corporation is offering its securities to the public and not less than seven days before the meeting where the corporation is not offering its securities to the public; and

(b) there is deposited with the requisition a sum reasonably sufficient to meet the expenses of the corporation in giving effect thereto.

Where  
directors  
not bound  
to circulate  
statement

(5) The directors are not bound under this section to circulate any statement if, on the application of the corporation or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and on any such application the court may order the costs of the corporation to be paid in whole or in part by the requisitionists notwithstanding that they are not parties to the application.

Where no  
liability

(6) No corporation or a director, officer or employee thereof or person acting on its behalf, except a requisitionist, is liable in damages or otherwise by reason only of the giving of a notice or the circulation of a statement, or both, in compliance with this section.

Duty to  
deal with  
requisitioned  
matter

(7) Notwithstanding anything in the by-laws of the corporation, where the requisitionists have complied with this section, the resolution, if any, mentioned in the requisition shall be dealt with at the meeting to which the requisition relates.

Repayment  
of expenses

(8) The corporation shall pay to the requisitionists the sum deposited under clause *b* of subsection 4 unless at the meeting to which the requisition relates the shareholders by a majority of the votes cast reject the repayment to the requisitionists. R.S.O. 1960, c. 71, s. 309 (1-8), *amended*.



*Liabilities*

**103.**—(1) Where the issued capital of a corporation is decreased by an amendment to the articles, each person who was a shareholder on the effective date of the amendment is individually liable to the creditors of the corporation for the debts due on that date to an amount not exceeding the amount of the repayment to him. Liability on decrease of issued capital

(2) A person is not liable under subsection 1 unless, Limitation of liability

(a) the corporation has been sued for the debt within six months after the effective date of the amendment and execution has been returned unsatisfied in whole or in part; and

(b) he is sued for the debt in a court of competent jurisdiction within two years from the effective date of the amendment.

(3) After execution has been so returned, the amount due on the execution, not exceeding the amount of the repayment to the person, is the amount recoverable against such person. Idem

(4) Where it is made to appear that there are numerous shareholders who may be liable under this section, the court of competent jurisdiction may permit an action to be brought against one or more of them as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such shareholders as may be found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined. Class actions

(5) No person holding shares in the capacity of a personal representative and registered on the records of the corporation as a shareholder and therein described as representing in such capacity a named estate, person or trust is personally liable under this section, but the estate, person or trust is subject to all liabilities imposed by this section. R.S.O. 1960, c. 71, s. 36, *amended*. Shareholder holding shares in fiduciary capacity

**104.** A shareholder of a corporation as such is not answerable or responsible for any act, default, obligation or liability of the corporation, or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the corporation. R.S.O. 1960, c. 71, s. 55 (1), *amended*. Shareholder's liability limited

*Meetings*Place of  
meetings

**105.**—(1) Subject to subsections 2 and 3, the meetings of the shareholders shall be held at the place where the head office of the corporation is located.

Exception

(2) Where the by-laws of the corporation so provide, the meetings of the shareholders may be held at any place within Ontario.

Idem

(3) Where the articles of the corporation so provide, the meetings of the shareholders may be held at one or more places outside Ontario specified therein. R.S.O. 1960, c. 71, s. 74 (1-3), *amended*.

Share-  
holders'  
meetings

**106.**—(1) Subject to subsection 2 and in the absence of other provisions in that behalf in the articles or by-laws of the corporation,

(a) notice of the time and place for holding a meeting of the shareholders shall be given to each person who is entitled to notice of meetings and who on the record date for notice, appears on the records of the corporation as a shareholder by sending the notice by prepaid mail to his latest address as shown on the records of the corporation,

(i) in the case of a corporation that is offering its securities to the public, twenty-one days or more before the date of the meeting, and

(ii) in the case of a corporation that is not offering its securities to the public, ten days or more before the date of the meeting,

but in no case more than fifty days before the date of the meeting;

(b) all questions proposed for the consideration of the shareholders at a meeting of shareholders shall be determined by the majority of the votes cast, and the chairman presiding at the meeting has a second or casting vote in case of an equality of votes;

(c) the chairman presiding at a meeting of shareholders may, with the consent of the meeting and subject to such conditions as the meeting decides, adjourn the meeting from time to time and from place to place;

(d) the president or, in his absence, a vice-president who is a director shall preside as chairman at a meeting of shareholders, but, if there is no president

or such a vice-president or if at a meeting neither of them is present within fifteen minutes after the time appointed for the holding of the meeting, the shareholders present shall choose a person from their number to be the chairman;

- (e) unless a poll is demanded, an entry in the minutes of a meeting of shareholders to the effect that the chairman declared a motion to be carried is admissible in evidence as *prima facie* proof of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

(2) The articles or by-laws of the corporation shall not <sup>Notice</sup> provide for fewer than,

- (a) twenty-one days notice in the case of a corporation that is offering its securities to the public, or
- (b) ten days notice in the case of a corporation that is not offering its securities to the public,

for meetings of shareholders but in no case shall notice be given more than fifty days before the date of the meeting and the articles or by-laws shall not provide that notice may be given otherwise than individually.

(3) If a poll is demanded, it shall be taken in such manner <sup>Poll</sup> as the by-laws prescribe, and, if the by-laws make no provision therefor, then as the chairman directs. R.S.O. 1960, c. 71, s. 79, *amended*.

**107.** A corporation shall hold an annual meeting of its <sup>Annual</sup> shareholders not later than eighteen months after its incorporation and subsequently not more than fifteen months after the holding of the last preceding annual meeting and at such meeting any shareholder shall have an opportunity to raise any matter relevant to the affairs and business of the corporation. R.S.O. 1960, c. 71, s. 306, *amended*.

**108.** The directors may at any time call a general meeting <sup>General</sup> of the shareholders for the transaction of any business, the general nature of which is specified in the notice calling the meeting. R.S.O. 1960, c. 71, s. 307.

**109.—**(1) The persons holding equity shares carrying at least 5 per cent of the voting rights attached to all equity <sup>Requisition for</sup> shares of the corporation for the time being outstanding may <sup>shareholders' meeting</sup> requisition the directors to call a general meeting of the shareholders for any purpose that is connected with the affairs of the corporation and that is not inconsistent with this Act.

Requisition (2) The requisition shall state the general nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the head office of the corporation and may consist of several documents in like form, each signed by one or more requisitionists.

Duty of directors to call meeting (3) Upon deposit of the requisition, the directors shall forthwith call a general meeting of the shareholders for the transaction of the business stated in the requisition.

Where requisitionists may call meeting (4) If the directors do not within thirty days from the date of the deposit of the requisition call and hold the meeting, any of the requisitionists may call the meeting, which shall be held within sixty days from the date of the deposit of the requisition.

Calling of meeting (5) A meeting called under this section shall be called as nearly as possible in the same manner as meetings of shareholders are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.

Repayment of expenses (6) The corporation shall,

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the action taken by them under subsection 4; and
- (b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting, the shareholders by a majority of the votes cast reject the reimbursement of the requisitionists. R.S.O. 1960, c. 71, s. 308, *amended*.

Idem, on court order

**110.** Notwithstanding section 109, upon application by a shareholder of a corporation, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the corporation or its shareholders that the meeting be held on requisition, may make an order, upon such terms as to security for the costs of holding the meeting or otherwise as to the court seem fit, requiring the directors to call a general meeting of the shareholders for any purpose that is connected with the affairs of the corporation and that is not inconsistent with this Act. *New.*



**111.** If for any reason it is impracticable to call a meeting of shareholders of a corporation in any manner in which meetings of shareholders may be called or to conduct the meeting in the manner prescribed by this Act, the articles or by-laws, the court may, on the application of a director or a shareholder who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the court thinks fit, and any meeting called, held and conducted in accordance with the order shall for all purposes be deemed to be a meeting of shareholders of the corporation duly called, held and conducted. R.S.O. 1960, c. 71, s. 310, *amended*. Court may direct method of holding meetings

**112.—**(1) The by-laws may provide for the fixing in advance of a date as the record date, Record dates

(a) for the determination of the shareholders entitled to notice of meetings of the shareholders which record date for notice shall not be more than fifty days before the date of the meeting and not fewer than the minimum number of days for notice of the meeting and where no such record date for notice is fixed by by-law, the record date for notice shall be at the close of business on the day next preceding the day on which notice is given or sent; and

(b) for the determination of the shareholders entitled to vote at meetings of the shareholders, which record date for voting shall be not more than forty-eight hours, excluding Saturdays and holidays, before the date of the meeting and where no such record date for voting is fixed by by-law, the record date for voting shall be at the time of the taking of the vote. *New.*

(2) The holder of each common share and, unless the articles condition, restrict, limit or prohibit the right to vote, the holder of each special share who, on the record date for voting, appears on the records of the corporation as a shareholder is entitled to one vote for each share held by him at all meetings of the shareholders of the corporation, or such greater number of votes for each share respecting such matters as the articles provided. R.S.O. 1960, c. 71, s. 29, *amended*. Voting rights

**113.—**(1) Where a person holds shares as a personal representative, that person or his proxy is the person entitled to vote at all meetings of shareholders in respect of the shares so held by him. Personal representative

Mortgagee  
etc.

(2) Where a person mortgages or hypothecates his shares, that person or his proxy is the person entitled to vote at all meetings of shareholders in respect of such shares unless, in the instrument creating the mortgage or hypothec, he has expressly empowered the person holding the mortgage or hypothec to vote in respect of such shares, in which case, subject to the articles, such holder or his proxy is the person entitled to vote in respect of the shares. R.S.O. 1960, c. 71, s. 77, *amended*.

Joint  
shareholders

**114.** Where two or more persons hold the same share or shares jointly, any one of such persons present at a meeting of shareholders has the right in the absence of the other or others to vote in respect of such share or shares, but, if more than one of such persons are present or represented by proxy and vote, they shall vote together as one on the share or shares jointly held by them. R.S.O. 1960, c. 71, s. 78, *amended*.

Interpre-  
tation

**115.** In this section and in sections 116 to 121,

- (a) "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy;
- (b) "information circular" means the circular referred to in subsection 1 of section 118;
- (c) "proxy" means a completed and executed form of proxy by means of which a shareholder has appointed a person as his nominee to attend and act for him and on his behalf at a meeting of shareholders;
- (d) "solicit" and "solicitation" include,
  - (i) any request for a proxy whether or not accompanied by or included in a form of proxy,
  - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
  - (iii) the sending or delivery of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
  - (iv) the sending or delivery of a form of proxy to a shareholder under section 117,

but do not include,

- (v) the sending or delivery of a form of proxy to a shareholder in response to an unsolicited request made by him or on his behalf, or
- (vi) the performance by any person of ministerial acts or professional services on behalf of a person soliciting a proxy. 1966, c. 28, s. 4, *part.*

**116.**—(1) Every shareholder, including a shareholder that <sup>Proxies</sup> is a body corporate, entitled to vote at a meeting of shareholders may by means of a proxy appoint a person, who need not be a shareholder, as his nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy.

(2) A proxy shall be executed by the shareholder or his attorney authorized in writing or, if the shareholder is a body corporate, under its corporate seal or by an officer or attorney thereof duly authorized, and ceases to be valid one year from its date. <sup>Execution and termination</sup>

(3) In addition to the requirements, where applicable, of <sup>Contents</sup> section 120, a proxy shall contain the date thereof and the appointment and name of the nominee and may contain a revocation of a former proxy and restrictions, limitations or instructions as to the manner in which the shares in respect of which the proxy is given are to be voted or that may be necessary to comply with the laws of any jurisdiction in which the shares of the corporation are listed on a stock exchange or a restriction or limitation as to the number of shares in respect of which the proxy is given.

(4) In addition to revocation in any other manner per- <sup>Revocation</sup> mitted by law, a proxy may be revoked by an instrument in writing executed by the shareholder or by his attorney authorized in writing or, if the shareholder is a body corporate, under its corporate seal or by an officer or attorney thereof duly authorized, and deposited either at the head office of the corporation at any time up to and including the last business day preceding the day of the meeting, or any adjournment thereof, at which the proxy is to be used or with the chairman of such meeting on the day of the meeting, or adjournment thereof, and upon either of such deposits the proxy is revoked.

(5) The directors may by resolution fix a time not exceeding <sup>Time limit for deposit</sup> forty-eight hours, excluding Saturdays and holidays, preceding any meeting or adjourned meeting of shareholders before which time proxies to be used at that meeting must be

deposited with the corporation or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting or in the information circular relating thereto. 1966, c. 28, s. 4, *part*.

Mandatory  
solicitation  
of proxies

**117.** Subject to section 119, the management of a corporation shall, concurrently with or prior to giving notice of a meeting of shareholders of the corporation, send by prepaid mail to each shareholder who is entitled to vote at such meeting at his latest address as shown on the records of the corporation a form of proxy that complies with section 120 for use at the meeting. 1966, c. 28, s. 4, *part, amended*.

Information  
circular

**118.—**(1) Subject to subsection 2 and section 119, no person shall solicit proxies unless,

- (a) in the case of a solicitation by or on behalf of the management of a corporation, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each shareholder of the corporation whose proxy is solicited at his latest address as shown on the records of the corporation; or
- (b) in the case of any other solicitation, the person making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each shareholder of the corporation whose proxy is solicited.

Where  
ss. 117,  
118 (1)  
apply

(2) Subsection 1 does not apply to,

- (a) any solicitation, otherwise than by or on behalf of the management of a corporation, where the total number of shareholders whose proxies are solicited is not more than fifteen;
- (b) any solicitation by a person made pursuant to section 79 of *The Securities Act, 1966*; and
- (c) any solicitation by a person in respect of shares of which he is the beneficial owner.

1966, c. 142

Untrue  
solicitations  
an offence

(3) Section 256 applies to a solicitation that is subject to this section by means of a form of proxy, information circular or other communication. 1966, c. 28, s. 4, *part, amended*.

Where  
ss. 117,  
118 (1)  
apply

**119.—**(1) Section 117 and subsection 1 of section 118 apply only to a corporation that is offering its securities to the public.



(2) Upon the application of any interested person, the Commission may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order, on such terms and conditions as seem to it just and expedient, exempting, in whole or in part, any person from the requirements of section 117 or from the requirements of subsection 1 of section 118. 1966, c. 28, s. 4, *part, amended.* Exemption  
orders

**120.** Where section 117 or 118 applies to a solicitation of proxies, Special  
form of  
proxy

- (a) the form of proxy sent to a shareholder by a person soliciting proxies,
  - (i) shall indicate in bold-face type or other conspicuous manner whether or not the proxy is solicited by or on behalf of the management of the corporation, and
  - (ii) shall provide a specifically designated blank space for dating the form of proxy;
- (b) the form of proxy shall provide means whereby the person whose proxy is solicited is afforded an opportunity to specify that the shares registered in his name shall be voted by the nominee in favour of or against, in accordance with such person's choice, each matter or group of related matters identified therein or in the information circular as intended to be acted upon, other than the election of directors and the appointment of auditors, but a proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by such means if the form of proxy or the information circular states in bold-face type or other conspicuous manner how it is intended to vote the shares represented by the proxy in each such case;
- (c) a proxy may confer discretionary authority with respect to,
  - (i) amendments or variations to matters identified in the notice of meeting, or
  - (ii) other matters that may properly come before the meeting,

but only if,

- (iii) the person by whom or on whose behalf the solicitation is made is not aware a reasonable

time prior to the time the solicitation is made that any such amendments, variations or other matters are to be presented for action at the meeting, and

- (iv) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority;
- (d) no proxy shall confer authority,
  - (i) to vote for the election of any person as a director of the corporation unless a *bona fide* proposed nominee for such election is named in the information circular, or
  - (ii) to vote at any meeting other than the meeting specified in the notice of meeting or any adjournment thereof;
- (e) the information circular or form of proxy shall state that the shares represented by the proxy will be voted and that, where the person whose proxy is solicited specifies a choice with respect to any matter to be acted upon under clause *b*, the shares shall, subject to section 121, be voted in accordance with the specifications so made;
- (f) the information circular or form of proxy shall indicate in bold-face type or other conspicuous manner that the shareholder has the right to appoint a person to attend and act for him and on his behalf at the meeting other than the person, if any, designated in the form of proxy, and shall contain instructions as to the manner in which the shareholder may exercise such right; and
- (g) if the form of proxy contains a designation of a named person as nominee, means shall be provided whereby the shareholder may designate in a form of proxy some other person as his nominee for the purpose of subsection 1 of section 116. 1966, c. 28, s. 4, *part, amended*.

Where  
vote by  
ballot  
not  
required

**121.** If the votes represented at a meeting by proxies requiring that they be voted in respect of a particular matter or group of matters total to the knowledge of the chairman of that meeting, less than 5 per cent of all of the voting rights attaching to all of the shares entitled to be voted and be represented at the meeting, the chairman has the right not to conduct a

vote by way of ballot on any such matter or group of matters unless a poll is demanded at the meeting in which case the vote shall be by way of ballot. 1966 c. 28 s. 4 *part, amended*.

## DIRECTORS AND OFFICERS

### *Directors*

**122.**—(1) Every corporation shall have a board of directors <sup>Board of directors</sup> howsoever designated.

(2) The board of directors shall consist of a fixed number <sup>Com-  
position</sup> of directors,

(a) in the case of a corporation that is not offering its securities to the public, of at least one; and

(b) in the case of a corporation that is offering its securities to the public, of not fewer than three, of whom at least two shall not be officers or employees of the corporation or of any affiliate of the corporation. R.S.O. 1960, c. 71, s. 296 (1, 2), *amended*.

**123.**—(1) Each of the persons named as first directors <sup>First  
directors</sup> in the articles of a corporation is a director of the corporation until replaced by a person duly elected or appointed in his stead.

(2) The first directors of a corporation have all the powers <sup>Idem</sup> and duties and are subject to all the liabilities of directors. R.S.O. 1960, c. 71, s. 297 (1, 2), *amended*.

**124.**—(1) A corporation may by special by-law increase <sup>Change in  
number of</sup> or, subject to subsection 2 of section 122, decrease the number <sup>directors</sup> of its directors as set out in its articles.

(2) The corporation shall file with the Minister a certified <sup>Filing of  
by-law</sup> copy of the by-law within ten days after the by-law has been confirmed by the shareholders.

(3) Failure to comply with subsection 2 does not affect <sup>Validity</sup> the validity of the by-law. R.S.O. 1960, c. 71, s. 298, *amended*.

**125.**—(1) No person under twenty-one years of age shall <sup>Age of  
directors</sup> be a director of a corporation.

(2) No undischarged bankrupt or mentally incompetent <sup>Qualifica-  
tions</sup> person shall be a director, and, if a director becomes a bankrupt or a mentally incompetent person, he thereupon ceases to be a director. R.S.O. 1960, c. 71, s. 299 (4, 5), *amended*.

Consent

(3) A person who is elected or appointed a director is not a director unless,

- (a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as director;
- (b) where he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.

Idem

(4) For the purposes of subsection 3, a person who is elected or appointed as director and refuses under clause *a* of subsection 3 or fails to consent under clause *b* of subsection 3 shall be deemed not to have been elected or appointed as a director. *New.*

Election of directors

**126.**—(1) The directors shall be elected by the shareholders in general meeting, and the election shall be by ballot or in such other manner as the by-laws of the corporation prescribe.

Idem

(2) The election of directors shall take place yearly, or at such other interval not exceeding five years as is provided by the articles and all the directors then in office shall retire, but, if qualified, are eligible for re-election. R.S.O. 1960, c. 71, s. 300 (1, 2), *amended*.

Continu-  
ance in  
office

(3) If an election of directors is not held within the prescribed period, the directors continue in office until their successors are elected.

Rotation  
of directors

(4) The articles may provide for the election and retirement of directors in rotation, but in that case no director shall be elected for a term of more than five years and at least three directors shall retire from office in each year. R.S.O. 1960, c. 71, s. 300 (3, 4), *amended*.

Cumulative  
voting for  
directors

**127.** The articles or a special by-law of a corporation may provide that,

- (a) every shareholder entitled to vote at an election of directors has the right to cast thereat a number of votes equal to the number of votes attached to the shares held by him multiplied by the number of directors to be elected, and he may cast all such votes in favour of one candidate or distribute them among the candidates in such manner as he sees fit; and



- (b) where he has voted for more than one candidate without specifying the distribution of his votes among such candidates, he shall be deemed to have divided his votes equally among the candidates for whom he voted. R.S.O. 1960, c. 71, s. 64 (1), *amended*.

**128.**—(1) Subject to subsection 2, where there is a quorum <sup>Vacancies</sup> of directors in office and a vacancy occurs in the board, the directors remaining in office may appoint a qualified person to fill the vacancy for the remainder of the term. R.S.O. 1960, c. 71, s. 301 (1, 2), *amended*.

(2) Where part of the board of directors has been elected <sup>Idem, where</sup> by the holders of the shares of a special class of shares as <sup>elected by</sup> provided in clause *d* of subsection 1 of section 27, and a <sup>class of</sup> vacancy occurs in that part of the board, the remaining <sup>shareholders</sup> directors or director, if any, in that part of the board may appoint a qualified person to fill the vacancy for the remainder of the term, and, if there is no such remaining director, the holders of that class of shares at a general meeting thereof that may be called by any holder of shares of that class may elect a qualified person to fill the vacancy for the remainder of the term. *New*.

(3) When there is not a quorum of directors in office, the <sup>Idem, where no</sup> director or directors then in office shall forthwith call a <sup>quorum</sup> general meeting of the shareholders to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any shareholder. R.S.O. 1960, c. 71, s. 301 (3).

**129.** Unless the articles or by-laws otherwise provide, a <sup>Quorum of</sup> majority of the board of directors constitutes a quorum, but in no case shall a quorum be less than two-fifths of the board of directors or two directors, whichever is the greater. R.S.O. 1960, c. 71, s. 301 (1), *amended*.

**130.**—(1) Subject to subsection 2, the meetings of the <sup>Place of</sup> board of directors and the executive committee shall be held <sup>meetings</sup> at the place where the head office of the corporation is located.

(2) Where the by-laws of the corporation so provide, the <sup>Exception</sup> meetings of the board of directors and of the executive committee may be held at any place within or outside Ontario. R.S.O. 1960, c. 71, s. 74 (1, 2), *amended*.

**131.**—(1) In addition to any other provision in the articles <sup>Calling</sup> or by-laws of a corporation for calling meetings of directors, <sup>meetings</sup> a quorum of the directors may, at any time, call a meeting of <sup>of directors</sup>

the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting.

Notice

(2) In the absence of any other provision in that behalf in the by-laws of the corporation, notice of the time and place for the holding of the meeting called under subsection 1 shall be given to every director of the corporation by sending the notice by prepaid mail ten days or more before the date of the meeting to his latest address as shown on the records of the corporation. *New.*

Duties

**132.**—(1) The board of directors shall manage or supervise the management of the affairs and business of the corporation.

Conduct of  
business

(2) Subject to section 133 and subsection 1 of section 23, no business of a corporation shall be transacted by its directors except at a meeting of directors at which a quorum of the board is present.

Idem

(3) Where there is a vacancy or vacancies in the board of directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office. R.S.O. 1960, c. 71, s. 296, *amended.*

Executive  
committee

**133.**—(1) Where the number of directors of a corporation is more than six, and if authorized by a special by-law, the directors may elect from among their number an executive committee consisting of not fewer than three and may delegate to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors.

Quorum

(2) An executive committee may fix its quorum, which shall be not less than a majority of its members. R.S.O. 1960, c. 71, s. 69 (1, 2), *amended.*

Disclosure  
by directors  
of interests  
in contracts

**134.**—(1) Every director of a corporation who has, directly or indirectly, any interest in any contract or transaction to which the corporation is or is to be a party, other than a contract or transaction limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the corporation and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase and sale of assets by or to the corporation or a subsidiary thereof, the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such information is within his knowledge or control.

(2) Subsection 1 does not require the disclosure of any interest in any contract or transaction unless the interest and the contract or transaction are both material.

(3) The declaration required by this section shall be made at the meeting of the directors at which the contract or transaction is first considered or, if the director is not at the date of the meeting interested in the contract or transaction, at the next meeting of the directors held after he becomes so interested, and, where the director becomes interested in a contract or transaction after it is entered into, the declaration shall be made at the first meeting of the directors held after he becomes so interested.

(4) If a director has made a declaration and disclosure of his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the corporation, the director, if he was acting honestly and in good faith at the time the contract or transaction was entered into is not by reason only of his holding the office of director accountable to the corporation or to its shareholders for any profit or gain realized from the contract or transaction, and the contract or transaction, if it was in the best interest of the corporation, is not voidable by reason only of the director's interest therein.

(5) Notwithstanding anything in this section, a director, if he was acting honestly and in good faith, is not accountable to the corporation or to its shareholders for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction, if it was in the best interests of the corporation at the time it was entered into is not by reason only of the director's interest therein voidable,

(a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for that purpose; and

(b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting or in the information circular required by section 118. R.S.O. 1960, c. 71, s. 70, *amended*.

**135.—**(1) Where any shares of a corporation are acquired by it by redemption, purchase or acceptance for surrender in contravention of this Act or the articles, the directors who voted in favour of or consented to the resolution authorizing

the redemption, purchase or acceptance for surrender are jointly and severally liable to the corporation to the extent of the amount paid for the acquisition of the shares.

Application  
to court

(2) Where any shares of a corporation are acquired by it by redemption, purchase or surrender in contravention of this Act or the articles,

(a) any shareholder of the corporation; or

(b) where the acquisition is in contravention of subsection 1 of section 38, subsection 3 of section 39 or section 100, any creditor of the corporation who was a creditor at the time of the acquisition,

may apply to the court within two years of the acquisition, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any shareholder whose shares were acquired liable to the corporation, jointly and severally with the directors, to the extent of the amount paid to him for his shares. *New.*

Liability  
of directors  
re dividends

**136.** Where any dividend is declared and paid in contravention of section 153 or 154,

(a) the directors who voted in favour of or consented to the resolution authorizing the declaration of the dividend are jointly and severally liable to the corporation to the extent of the amount of the dividend so declared and paid or such part thereof as renders the corporation insolvent or diminishes its capital; and

(b) any shareholder of the corporation or any creditor of the corporation who was a creditor at the time of the declaration of the dividend may apply to the court within two years of the declaration, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any shareholder to whom the dividend is paid jointly and severally liable with the directors to the extent of the amount of the dividend paid to him. R.S.O. 1960, c. 71, s. 61 (3), *part, amended.*

Consent of  
director at  
meeting

**137.—**(1) A director who was present at a meeting of the board of directors or an executive committee thereof when,

(a) the redemption, purchase or acceptance for surrender of shares of the corporation is authorized;



- (b) the declaration and payment of a dividend is authorized; or
- (c) a loan or guarantee mentioned in section 146 is authorized,

shall be deemed to have consented thereto unless,

- (d) his dissent is entered in the minutes of the meeting;
- (e) he files his written dissent with the person acting as secretary of the meeting before its adjournment; or
- (f) he delivers or sends his dissent by registered mail to the corporation immediately after the adjournment of the meeting,

and within seven days after complying with clause *d*, *e* or *f* he sends a copy of his dissent by registered mail to the Minister.

(2) A director who voted in favour of a matter referred to <sup>Idem</sup> in subsection 1 is not entitled to dissent under subsection 1.

(3) A director who was not present at a meeting of the board of directors or any executive committee thereof when, <sup>Consent of director not at meeting</sup>

- (a) the redemption, purchase or acceptance for surrender of shares of the corporation is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) a loan or guarantee mentioned in section 146 is authorized,

shall be deemed to have consented thereto unless,

- (d) he delivers or sends to the corporation by registered mail his dissent; or
- (e) he causes his dissent to be filed with the minutes of the meeting,

within seven days after he becomes aware of the authorization referred to in clause *a*, *b* or *c* and unless, within seven days after complying with clause *d* or *e*, he sends a copy of his dissent by registered mail to the Minister. *New.*

**138.**—(1) A director is not liable under section 135, 136 <sup>Exception to liability</sup> or 146 if, in the circumstances, he discharged his duty to the corporation in accordance with section 144.

Liability  
not  
excluded

(2) The liability imposed by this Act upon a director is in addition to any other liability that is by law imposed upon him. *New.*

Liability of  
directors  
for wages  
R.S.O. 1960,  
c. 230

**139.**—(1) The directors of a corporation are jointly and severally liable to the employees of the corporation to whom *The Master and Servant Act* applies for all debts that become due while they are directors for services performed for the corporation, not exceeding six months wages, and for the vacation pay accrued for not more than twelve months under *The Employment Standards Act, 1968* and the regulations thereunder or under any collective agreement made by the corporation.

Limitation  
of liability

(2) A director is liable under subsection 1,

(a) only if,

(i) the corporation has been sued for the debt within six months after it has become due and execution against the corporation has been returned unsatisfied in whole or in part, or

(ii) the corporation has within that period gone into liquidation or has been ordered to be wound up or has made an authorized assignment under the *Bankruptcy Act* (Canada), or a receiving order under the *Bankruptcy Act* (Canada) has been made against it and, in any such case, the claim for the debt has been proved; and

R.S.C. 1952  
c. 14

(b) he is sued for the debt while he is a director or within two years after he ceases to be a director.

Idem

(3) After execution has been so returned against the corporation, the amount recoverable against the director is the amount remaining unsatisfied on the execution.

Rights of  
director  
who pays  
the debt

(4) If the claim for the debt has been proved in liquidation or winding-up proceedings or under the *Bankruptcy Act* (Canada), a director who pays the debt is entitled to any preference that the creditor paid would have been entitled to or, if a judgment has been recovered for the debt, the director is entitled to an assignment of the judgment. R.S.O. 1960, c. 71, s. 73 (1-4), *amended*.

Removal  
of directors

**140.** The shareholders may, by resolution passed by a majority of the votes cast at a general meeting duly called for that purpose, remove any director before the expiration of

his term of office and may, by a majority of the votes cast at the meeting, elect any person in his stead for the remainder of his term, but, where the directors have been elected by the method of voting provided by section 127, no director shall be removed from office where the votes cast against the resolution for his removal would, if cumulatively voted at an election of the full board of directors, be sufficient to elect one or more directors. R.S.O. 1960, c. 71, s. 66 (1), *amended*.

### *Officers*

**141.**—(1) A corporation shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors. Officers

(2) In the absence of other provisions in that behalf in the articles or by-laws, the directors, Election and appointment

(a) shall elect the president from among themselves;

(b) shall appoint or elect the secretary; and

(c) may appoint or elect one or more vice-presidents or other officers. R.S.O. 1960, c. 71, s. 302 (1, 2), *amended*.

**142.** A corporation may by special by-law,

Chairman  
of the  
board

(a) provide for the election or appointment by the directors from among themselves of a chairman of the board;

(b) define the duties of the chairman;

(c) assign to the chairman all or any of the duties of the president or of any other officer of the corporation,

and, if the by-law assigns to the chairman any of the duties of the president, it shall also fix and prescribe the duties of the president. R.S.O. 1960, c. 71, s. 303, *amended*.

**143.** Unless the articles or by-laws otherwise provide, no person shall be the president or chairman of the board of a corporation unless he is a director of the corporation but no other officer need be a director. R.S.O. 1960, c. 71, s. 304 (1), *amended*. Qualifications of chairman and president

### *General*

**144.** Every director and officer of a corporation shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the corporation, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. *New*. Standards of care, etc., of directors

Validity of  
acts of  
directors  
and officers

**145.** An act done by a director or by an officer is not invalid by reason only of any defect that is thereafter discovered in his appointment, election or qualification. R.S.O. 1960, c. 71, s. 305, *amended*.

Liability  
of directors  
and officers

**146.** Those directors and officers of a corporation who authorize or consent to a loan in contravention of section 17 are, until repayment of the loan, jointly and severally liable to the corporation and to its creditors for the debts of the corporation then existing or thereafter contracted to the amount of the loan with interest at the rate of 6 per cent a year. R.S.O. 1960, c. 71, s. 23 (4), *amended*.

Indemnifi-  
cation of  
directors

**147.**—(1) Subject to subsection 2, the by-laws of a corporation may provide that every director and officer of the corporation and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against,

- (a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and
- (b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the corporation. R.S.O. 1960, c. 71, s. 72, *amended*.

Idem

(2) No director or officer of a corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant. *New*.

Insurance

(3) A corporation may purchase and maintain insurance for the benefit of a director or officer thereof, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of a contravention of section 144. *New*.

#### INSIDERS

Insiders  
to report  
holdings  
to O.S.C.

**148.**—(1) A person who becomes an insider of a corporation shall, within ten days after the end of the month in which he becomes an insider, file with the Commission a report, as



of the day on which he became an insider, of his direct or indirect beneficial ownership of or control or direction over securities of the corporation.

(2) If a person who is an insider of a corporation but has <sup>idem</sup> no direct or indirect beneficial ownership of or control or direction over securities of the corporation acquires direct or indirect beneficial ownership of or control or direction over any such securities, he shall, within ten days after the end of the month in which he acquired such direct or indirect beneficial ownership or such control or direction, file with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of or control or direction over securities of the corporation.

(3) A person who has filed or is required to file a report <sup>Subsequent reports of changes</sup> under subsection 1 or 2 and whose direct or indirect beneficial ownership of or control or direction over securities of the corporation changes from that shown or required to be shown in such report or in the last report filed by him under this section shall, within ten days following the end of the month in which such change takes place, provided that he was an insider of the corporation at any time during such month, file with the Commission a report of his direct or indirect beneficial ownership of or control or direction over securities of the corporation at the end of such month and the change or changes therein that occurred during the month and giving such details of each transaction as may be required by the regulations. 1966, c. 28, s. 3, *part, amended*.

**149.**—(1) All reports filed with the Commission under section 148 shall, upon payment of the prescribed fee, be open <sup>Reports may be inspected</sup> to public inspection at the offices of the Commission during normal business hours of the Commission, and any person may make extracts from such reports.

(2) The Commission shall summarize in or as part of a <sup>Publication of information contained in reports</sup> monthly periodical for distribution to the public on payment of the prescribed fee therefor the information contained in the reports so filed. 1966, c. 28, s. 3, *part*.

**150.**—(1) Every insider of a corporation or associate or affiliate of such insider who, in connection with a transaction relating to the securities of the corporation, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person for any direct loss suffered by such person as a result of the transaction, unless the information <sup>Liability of insiders</sup>

was known or ought reasonably to have been known to such person at the time of the transaction, and is also accountable to the corporation for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of the transaction.

Limitation  
period

(2) An action to enforce any right created by subsection 1 may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action. 1966, c. 28, s. 3, *part.*

Order to  
commence  
action

**151.**—(1) Upon application by any person who was at the time of a transaction referred to in subsection 1 of section 150 or is at the time of the application an owner of securities of the corporation, the court may, if satisfied that,

(a) such person has reasonable grounds for believing that the corporation has a cause of action under section 150; and

(b) either,

(i) the corporation has refused or failed to commence an action under section 150 within sixty days after receipt of a written request from such person so to do, or

(ii) the corporation has failed to prosecute diligently an action commenced by it under section 150,

make an order, upon such terms as to security for costs and otherwise as to the court seems fit, requiring the Commission to commence or continue an action in the name of and on behalf of the corporation to enforce the liability created by section 150.

Notice to  
corporation  
and O.S.C.

(2) The applicant under subsection 1 shall give to the corporation and the Commission notice of his application, and the corporation and the Commission have the right to appear and be heard thereon.

Order to  
require  
corporation  
to  
co-operate

(3) Every order made under subsection 1 shall provide that the corporation shall co-operate fully with the Commission in the institution and prosecution of the action and shall make available to the Commission all records, documents and other material or information known to the corporation or reasonably ascertainable by the corporation relevant to the action. 1966, c. 28, s. 3, *part.*

**152.** Upon the application of any interested person, the Commission may, if satisfied upon the circumstances of the particular case that there is adequate justification for so doing, make an order upon such terms and conditions as seem to the Commission to be expedient exempting in whole or in part any person from the requirements of section 148. *New.* Exception

#### DIVIDENDS

**153.**—(1) Subject to the articles of the corporation, the directors may declare and the corporation may pay dividends on its issued shares. Power to declare dividends

(2) A dividend may be paid in cash or in property not exceeding in value the amount of the dividend. Manner of payment

(3) The directors shall not declare and the corporation shall not pay any dividend when the corporation is insolvent, or any dividend the payment of which renders the corporation insolvent or that diminishes its capital. R.S.O. 1960, c. 71, s. 61 (1-3), *amended.* When dividend not to be declared

**154.**—(1) Notwithstanding anything in this Act, a corporation, Corporations with wasting assets

(a) that for the time being carries on as its principal business the business of operating a producing mining, gas or oil property owned and controlled by it; or

(b) at least 75 per cent of the assets of which are of a wasting character; or

(c) incorporated for the object of acquiring the assets or a substantial part of the assets of a body corporate and administering such assets for the purpose of converting them into cash and distributing the cash among the shareholders of the corporation,

may declare and pay dividends out of the funds derived from the operations of the corporation.

(2) The powers conferred by subsection 1 may be exercised notwithstanding that the value of the net assets of the corporation may be thereby reduced to less than its issued capital if the payment of the dividends does not reduce the value of its remaining assets to an amount insufficient to meet all the liabilities of the corporation exclusive of its issued capital. Extent of impairment of capital

(3) The powers conferred by subsection 1 may be exercised only under the authority of a special by-law. Special by-law

Idem

(4) Where dividends have been paid by a corporation in any of the cases mentioned in subsection 1 without the authority of a by-law, the payment thereof is nevertheless valid if a by-law adopting and approving the payment is passed and confirmed in the same manner as for a special by-law. R.S.O. 1960, c. 71, s. 61 (5-8), *amended*.

Stock dividends

**155.** For the amount of any dividend that the directors may declare payable in cash, they may declare a stock dividend and issue therefor shares of the corporation as fully paid. R.S.O. 1960, c. 71, s. 62, *amended*.

## RECORDS

Records

**156.—**(1) Where this Act requires a record to be kept by a corporation, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device.

Where not in bound book

(2) Where a record is not kept in a bound book, the corporation shall,

- (a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and
- (b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the record. R.S.O. 1960, c. 71, s. 1, cls. *a, h*, *amended*.

Admissibility of records in evidence

(3) The bound or looseleaf book or, where the record is not kept in a bound or looseleaf book, the information in the form in which it is made available under clause *b* of subsection 2 is admissible in evidence as *prima facie* proof, before and after dissolution of the corporation, of all facts stated therein. R.S.O. 1960, c. 71, s. 314, *amended*.

False information

(4) No person shall remove, withhold or destroy information required by this Act or the regulations to be recorded, or

- (a) record or assist in recording any information in a record; or
- (b) make information purporting to be accurate available in a form referred to in clause *b* of subsection 2,

knowing it to be untrue. R.S.O. 1960, c. 71, s. 316, *amended*.

Records

**157.** A corporation shall cause to be kept the following records:



1. A copy of the articles of the corporation.
2. All by-laws and resolutions, including special by-laws and special resolutions of the corporation.
3. A register of security holders in which is set out the names alphabetically arranged or alphabetically indexed in appropriate categories of,
  - i. all persons who are or have been within ten years registered as shareholders of the corporation and the address including the street and number, if any, of every such person while a holder, in which are set out also the number and class of shares held by such holder and, where the shares were issued before this Act comes into force and not fully paid, the amounts paid up and remaining unpaid on such shares,
  - ii. all persons who are or have been holders of debt obligations other than debt obligations in bearer form of the corporation and the address including the street and number, if any, of every such person while a holder in which are set out also the class or series and principal amount of the debt obligations held by such holder.
4. A register of directors in which are set out the names and residence addresses, including the street and number, if any, of all persons who are or have been directors of the corporation with the several dates on which each became or ceased to be a director.
5. Proper accounting records in which are set out all financial and other transactions of the corporation including, without limiting the generality of the foregoing, records of,
  - i. all sums of money received and disbursed by the corporation and the matters with respect to which receipt and disbursement took place,
  - ii. all sales and purchases of the corporation,
  - iii. the assets and liabilities of the corporation, and
  - iv. all other transactions affecting the financial position of the corporation.

6. The minutes of all proceedings at meetings of shareholders, directors and any executive committee. R.S.O. 1960, c. 71, ss. 312 (1), 313, 315, *amended*.

Register of transfers

**158.** Every corporation shall cause to be kept a register of transfers in which all transfers of securities issued by the corporation in registered form and the date and other particulars of each transfer shall be set out. R.S.O. 1960, c. 71, s. 40, *amended*.

Transfer agents

**159.** A corporation may appoint a transfer agent to keep the register of security holders and the register of transfers and may also appoint one or more branch transfer agents to keep branch registers of security holders and branch registers of transfers. R.S.O. 1960, c. 71, s. 41, *amended*.

Where registers to be kept

**160.**—(1) The register of security holders and the register of transfers shall be kept at the head office of the corporation or at such other office or place in Ontario as is appointed by resolution of the directors, and the branch register or registers of security holders and the branch register or registers of transfers may be kept at such office or offices of the corporation or other place or places, either in or outside Ontario, as are appointed by resolution of the directors.

Valid registration

(2) Registration of the transfer of a security of the corporation in the register of transfers or a branch register of transfers is a complete and valid registration for all purposes.

Entry in branch transfer register

(3) In each branch register of transfers shall be recorded only the particulars of the transfers of securities registered in that branch register of transfers.

Entry in register of transfers

(4) Particulars of every transfer of securities registered in every branch register of transfers shall be recorded in the register of transfers. R.S.O. 1960, c. 71, s. 42, *amended*.

Records open to examination by directors

**161.**—(1) The records mentioned in sections 157 and 158 shall, during the normal business hours of the corporation, be open to examination by any director and shall, except as provided in section 160 and in subsections 2 and 3 of this section, be kept at the head office of the corporation.

Records of account at branch

(2) A corporation may keep at any place where it carries on business such parts of the accounting records as relate to the operations, business and assets and liabilities of the corporation carried on, supervised or accounted for at such place, but there shall be kept at the head office of the corporation or such other place as is authorized under subsection 3 such records as will enable the directors to ascertain quarterly with reasonable accuracy the financial position of the corporation.

## (3) Where a corporation,

Order for  
removal of  
records

- (a) shows, to the satisfaction of the Minister, the necessity of keeping all or any of the records mentioned in subsection 1 at a place other than the head office of the corporation; and
- (b) gives to the Minister adequate assurance, by surety bond or otherwise, that such records will be open for examination,
  - (i) at the head office or some other place in Ontario designated by the Minister, and
  - (ii) by any person who is entitled to examine them and who has applied to the Minister for such an examination,

the Minister may, by order and upon such terms as he thinks fit, permit the corporation to keep such of them at such place or places, other than the head office, as he thinks fit. R.S.O. 1960, c. 71, s. 317 (1-3), *amended*.

(4) The Minister may by order upon such terms as he sees fit rescind any order made under subsection 3 or any order made by the Lieutenant Governor in Council under a predecessor of that subsection. R.S.O. 1960, c. 71, s. 317 (5), *amended*. Rescission  
of orders  
made under  
subs. 3

**162.**—(1) Subject to section 163, the records of a corporation mentioned in section 157 or 158, other than accounting records, resolutions of directors and the minutes of proceedings at meetings of directors and of executive committees, shall, during the normal business hours of the corporation and at the place or places where they are kept, be open to examination by the shareholders and creditors or their agents or personal representatives, and any of them may make extracts therefrom. Examination  
of records  
by share-  
holders  
and  
creditors

(2) No person shall refuse to permit a person entitled thereto to inspect such records or to make extracts therefrom. R.S.O. 1960, c. 71, s. 318, *amended*. Idem

**163.**—(1) A shareholder or creditor or the agent or personal representative of any of them shall not make or cause to be made a list of all or any of the security holders of the corporation unless he has filed with the corporation or its agent his affidavit in the following form, and, where the security holder or creditor is a body corporate, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the body corporate: List of  
security  
holders

## Form of Affidavit

Province of Ontario } In the matter of  
County of } (*Insert name of corporation*)

I, ....., of the ..... of .....,  
in the ..... of .....,  
make oath and say:

1. I am a shareholder (*or creditor*) of the above-named corporation.

(*Where the shareholder or creditor is a body corporate, indicate office and authority of deponent in paragraph 1.*)

2. I am applying to make a list of the shareholders (debt obligation holders) of the above-named corporation.

3. I require the list of shareholders (debt obligation holders) only for purposes connected with the above-named corporation.

4. The list of shareholders (debt obligation holders) and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

Use of  
list

(2) No person, other than the corporation or its agent, shall use a list of all or any of the security holders of a corporation obtained under this section,

(a) for the purpose of delivering or sending to all or any of the security holders advertising or other printed matter relating to securities, other than the securities of the corporation; or

(b) for any purpose not connected with the corporation.

Purposes  
connected  
with the  
corporation  
defined

(3) Purposes connected with the corporation include any effort to influence the voting of shareholders or debt obligation holders at any meeting thereof and include the acquisition or offering of shares to acquire control or to effect an amalgamation or reorganization. R.S.O. 1960, c. 71, s. 319 (1-3), *amended*.

Where  
list of  
shareholders  
to be  
furnished

**164.**—(1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection 2, may require a corporation, other than a corporation that is not offering its securities to the public, or its transfer agent to furnish within ten days from the filing of the affidavit a list setting out the names alphabetically arranged of all persons who are shareholders of the corporation, the number of shares owned by each such person and the address of each such person as shown on the records of the corporation made up to a date not more than ten days before the date of filing the affidavit.



(2) The affidavit referred to in subsection 1 shall be made <sup>Form of affidavit</sup> by the applicant and shall be in the following form:

Form of Affidavit

Province of Ontario } In the matter of  
County of } *(Insert name of corporation)*

I, ..... of the ..... of .....  
in the ..... of .....  
make oath and say:

*(Where the applicant is a body corporate, indicate office and authority of deponent.)*

1. I hereby apply for a list of the shareholders of the above-named corporation.

2. I require the list of shareholders only for purposes connected with the above-named corporation.

3. The list of shareholders and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

(3) Where the applicant is a body corporate, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the body corporate. <sup>Idem, where applicant a body corporate</sup>

(4) No person shall use a list of all or any of the shareholders of a corporation obtained under this section, <sup>Use of list</sup>

(a) for the purpose of delivering or sending to all or any of the shareholders advertising or other printed matter relating to securities other than the securities of the corporation; or

(b) for any purpose not connected with the corporation.

(5) Every corporation or transfer agent shall furnish a list in accordance with subsection 1 when so required. <sup>Furnishing list</sup>

(6) Purposes connected with the corporation include any effort to influence the voting of shareholders at any meeting thereof, any offer to acquire shares in the corporation or any effort to effect an amalgamation or reorganization. 1966, c. 28, s. 17, *part, amended*. <sup>Purposes connected with corporation defined</sup>

**165.** No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the security holders of a corporation. 1966, c. 28, s. 17, *part, amended*. <sup>Trafficking in lists</sup>

Power of  
court to  
correct

**166.**—(1) Where the name of a person is, without sufficient cause, entered in or omitted from the records of a corporation other than accounting records, or if default is made or unnecessary delay takes place in entering therein the fact of any person having ceased to be a security holder of the corporation, the person or security holder aggrieved, or any security holder of the corporation, or the corporation itself, may apply to the court for an order that the records be rectified, and the court may dismiss such application or make an order for the rectification of the records and may direct the corporation to compensate the party aggrieved for any damage he has sustained.

Decision  
as to title

(2) The court may, in any proceeding under this section, decide any question relating to the entitlement of a person who is a party to the proceeding to have his name entered in or omitted from such records whether the question arises between two or more security holders or alleged security holders, or between any security holders or alleged security holders and the corporation.

Trial  
of issue

(3) The court may direct an issue to be tried. R.S.O. 1960, c. 71, s. 320 (1-3), *amended*.

Jurisdiction  
of courts  
not  
affected

(4) This section does not deprive any court of any jurisdiction it otherwise has. R.S.O. 1960, c. 71, s. 320 (5).

#### AUDITORS AND FINANCIAL STATEMENTS

Exemption  
from  
audit  
provisions

**167.**—(1) Subject to subsection 2, where in a financial year all the shareholders of a corporation that,

(a) is not offering its securities to the public;

(b) has five or fewer shareholders; and

(c) has assets not exceeding \$500,000 and sales and gross operating revenues not exceeding \$1,000,000, as shown on the financial statement of the corporation for the preceding year,

consent in writing, the corporation is exempt from sections 168, and 169, subsections 1 to 4 of section 170 and section 171 in respect of the year in which the consent is given.

Subsidiary  
corporations

(2) Subsection 1 does not apply to a subsidiary corporation unless its holding corporation is exempted under subsection 1 at the time the consent of the shareholders is given. *New*.

**168.**—(1) The shareholders of a corporation at their first <sup>Auditors</sup> general meeting shall appoint one or more auditors to hold office until the close of the first annual meeting and, if the shareholders fail to do so, the directors shall forthwith make such appointment or appointments.

(2) The shareholders shall at each annual meeting appoint <sup>Idem</sup> one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

(3) The directors may fill any casual vacancy in the office <sup>Casual vacancy</sup> of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

(4) The shareholders may, by resolution passed by a major- <sup>Removal of auditor</sup> ity of the votes cast at a general meeting duly called for the purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term. R.S.O. 1960, c. 71, s. 80 (1-4), *amended*.

(5) Before calling a general meeting for the purpose speci- <sup>Notice to auditor</sup> fied in subsection 4, the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor,

- (a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and
- (b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

(6) The auditor has the right to make to the corporation, <sup>Right of auditor to make representations</sup> three days or more before the mailing of the notice of the meeting, representations in writing concerning his proposed removal as auditor, and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting. *New*.

(7) The remuneration of an auditor appointed by the share- <sup>Remuneration</sup> holders shall be fixed by the shareholders, or by the directors if they are authorized so to do by the shareholders, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

Appoint-  
ment by  
court

(8) If for any reason no auditor is appointed, the court may, on the application of a shareholder, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the corporation for his or their services.

Notice of  
appoint-  
ment

(9) The corporation shall give notice in writing to an auditor of his appointment forthwith after the appointment is made. R.S.O. 1960, c. 71, s. 80 (5-7), *amended*.

Notice to  
auditor of  
proposal  
to appoint  
another

**169.**—(1) If, in the information circular required by subsection 1 of section 118, reference is made to action proposed to be taken at an annual meeting of shareholders with respect to the appointment of an auditor other than the incumbent auditor, the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the incumbent auditor written notice of management's intention not to recommend his re-appointment at the annual meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed.

Right of  
incumbent  
auditor  
to make  
representations

(2) The incumbent auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing concerning the proposal not to re-appoint him as auditor, and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting. *New*.

Persons  
disqualified  
as auditors

**170.**—(1) No person shall be appointed or act as auditor of a corporation who is a director, officer or employee of the corporation or of an affiliate of the corporation or who is a partner, employer or employee of any such director, officer or employee or who is a related person to any director or officer of the corporation or of an affiliate of the corporation. R.S.O. 1960, c. 71, s. 81 (1), *amended*.

Idem

(2) No person shall be appointed or act as auditor of a corporation if he or any partner or employer of or related person to him beneficially owns, directly or indirectly, any securities of the corporation or of a subsidiary thereof or, if the corporation is a subsidiary, any securities of its holding corporation.

Where  
subs. 2  
does not  
apply

(3) Subsection 2 does not apply to a person, partner, employer or related person, as the case may be, if the person, partner, employer or related person is not empowered to decide whether securities of the corporation or its holding corporation, as the case may be, are to be beneficially owned, directly or indirectly, by him, or if he is not entitled to vote in respect thereof.



(4) Where, on the date this section comes into force, an <sup>Idem</sup> auditor or his partner, employer or related person owns securities as set out in subsection 2, notwithstanding subsection 2, he may for a period of two years from the date this section comes into force continue to act as auditor if he discloses in the report required under subsection 2 of section 171 that he or his partner, employer or related person so owns such securities but, at the expiration of such period, he shall cease to act as auditor unless he or his partner, employer or related person, as the case may be, has disposed of such securities.

(5) No person shall be appointed a receiver or a receiver <sup>Auditors not to be appointed receivers, etc.</sup> and manager or liquidator of any corporation of which he or any partner or employer of or a related person to him is the auditor or has been auditor within the two years preceding his appointment as receiver or receiver and manager or liquidator.

(6) No person who is appointed a trustee of the estate of a <sup>Trustee in bankruptcy not to be auditor</sup> corporation under the *Bankruptcy Act* (Canada) or any partner or employer of or a related person to him shall be <sup>R.S.C. 1952, c. 14</sup> appointed or act as auditor of the corporation. *New.*

**171.**—(1) The auditor shall make such examination as will <sup>Annual audit</sup> enable him to report to the shareholders as required by subsection 2. R.S.O. 1960, c. 71, s. 82 (1).

(2) The auditor shall make a report to the shareholders on the financial statement, other than the part thereof that relates to the period referred to in subclause ii of clause b of subsection 1 of section 172, to be laid before the corporation at any annual meeting during his term of office and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. R.S.O. 1960, c. 71, s. 82 (2); 1964, c. 10, s. 2; 1966, c. 28, s. 6 (1), *amended.* <sup>Auditor's report</sup>

(3) Where the report under subsection 2 does not contain <sup>Idem</sup> the unqualified opinion required thereby the auditor shall state in his report the reasons therefor.

(4) Where facts come to the attention of the officers or <sup>Facts discovered after statement</sup> directors which, if known prior to the date of the last annual general meeting of shareholders, would have required a material adjustment to the financial statement presented to such meetings, the officers or directors shall communicate such facts to the auditor who reported to the shareholders under this section and the directors shall forthwith amend the financial statement and send it to the auditor.

Amendment  
of  
auditor's  
report

(5) On the receipt of facts furnished under subsection 4 or from any other source, the auditor shall, if in his opinion it is necessary, amend his report in respect of the financial statement in accordance with subsection 3 and the directors or, if they fail to do so within a reasonable time, the auditor shall mail such amended report to the shareholders. *New.*

Idem

(6) If the financial statement contains a statement of changes in net assets or a statement of source and application of funds, the auditor shall include in his report a statement whether in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein. 1966, c. 28, s. 6 (2), *amended*.

Idem

(7) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding corporation are included in the financial statement of the holding corporation, the report of the auditor of the holding corporation required by subsection 2 may refer to the reports of auditors of one or more of such subsidiaries, but such reference shall not derogate from the duty of the auditor of the holding corporation to comply with subsection 2. *New.*

Idem

(8) The auditor in his report shall make such statements as he considers necessary,

- (a) if the corporation's financial statement is not in agreement with its accounting records;
- (b) if the corporation's financial statement is not in accordance with the requirements of this Act;
- (c) if he has not received all the information and explanations that he has required; or
- (d) if proper accounting records have not been kept, so far as appears from his examination. R.S.O. 1960, c. 71, s. 82 (3).

Right of  
access, etc.

(9) The auditor of a corporation has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers and employees of the corporation such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. R.S.O. 1960, c. 71, s. 82 (4), *amended*.

Idem

(10) The auditor of a holding corporation has right of access at all times to all records, documents, accounts and vouchers of all subsidiaries of the corporation and is entitled to require from the directors, officers and employees of each such sub-

sidiary such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. *New.*

(11) Where a subsidiary referred to in subsection 10 is a body <sup>Idem</sup> corporate to which this Act does not apply, the holding corporation shall make available to its auditor the records, documents, accounts and vouchers of that subsidiary and shall require the directors, officers and employees of that subsidiary to make available to its auditor the information and explanation required by subsection 10.

(12) The auditor of a corporation is entitled to attend any meeting of shareholders of the corporation and to receive all notices and other communications relating to any such meeting that a shareholder is entitled to receive, and to be heard at any such meeting that he attends on any part of the business of the meeting that concerns him as auditor. R.S.O. 1960, c. 71, s. 82 (5). <sup>Auditor may attend shareholders' meetings</sup>

(13) Any shareholder of a corporation, whether or not he is entitled to vote at meetings of shareholders, may, by notice in writing to the corporation given five days or more before any meeting of shareholders, require the attendance of the auditor at such meeting at the corporation's expense, and in such event the auditor shall attend the meeting. <sup>Shareholder may require auditor's attendance at shareholders' meetings</sup>

(14) At any meeting of shareholders the auditor, if present, shall answer inquiries directed to him concerning the bases upon which he formed the opinion stated in the report made under subsection 2. *New.* <sup>Auditors must answer inquiries at shareholders' meetings</sup>

**172.**—(1) The directors shall lay before each annual meeting of shareholders, <sup>Information to be laid before annual meeting</sup>

(a) in the case of a corporation that is not offering its securities to the public, a financial statement for the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, made up of,

- (i) a statement of profit and loss for such period
- (ii) a statement of surplus for such period, and
- (iii) a balance sheet as at the end of such period;

(b) in the case of a corporation that is offering its securities to the public, a comparative financial statement relating separately to,



- (i) the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, and
- (ii) the period covered by the financial year next preceding such latest completed financial year, if any,

made up of,

- (iii) a statement of profit and loss for each period,
- (iv) a statement of surplus for each period,
- (v) in the case of a corporation that is a mutual fund company or investment company as defined in the regulations under *The Securities Act, 1966*, a statement of changes in net assets for each period,
- (vi) in the case of a corporation other than one referred to in subclause v, a statement of source and application of funds for each period, and
- (vii) a balance sheet as at the end of each period;

(c) the report of the auditor to the shareholders; and

- (d) such further information respecting the financial position of the corporation as the articles or by-laws of the corporation require. R.S.O. 1960, c. 71, s. 83 (1); 1966, c. 28, s. 7 (1), *amended*.

Designation  
of  
statements

(2) It is not necessary to designate the statements referred to in subsection 1 as the statement of profit and loss, statement of surplus, statement of changes in net assets, statement of source and application of funds and balance sheet. 1966, c. 28, s. 7 (2), *amended*.

Auditor's  
report  
to be read

(3) The report of the auditor to the shareholders shall be read at the annual meeting and shall be open to inspection at the meeting by any shareholder. R.S.O. 1960, c. 71, s. 83 (3).

Statement  
of profit  
and loss

**173.**—(1) The statement of profit and loss to be laid before an annual meeting shall be drawn up so as to present fairly the results of the operations of the corporation for the period covered by the statement and so as to distinguish severally at least,



- (a) in the case of a corporation that is offering its securities to the public, sales or gross operating revenue;
- (b) the operating profit or loss before including or providing for other items of income or expense that are required to be shown separately;
- (c) income from investments in subsidiaries whose financial statements are not consolidated with those of the corporation;
- (d) income from investments in affiliated corporations other than subsidiaries;
- (e) income from other investments;
- (f) non-recurring profits and losses of significant amount including profits or losses on the disposal of capital assets and other items of a special nature to the extent that they are not shown separately in the statement of earned surplus;
- (g) any provision for depreciation or for obsolescence or for depletion;
- (h) amounts written off for goodwill or amortization of any other intangible assets to the extent that they are not shown separately in the statement of earned surplus;
- (i) interest on indebtedness initially incurred for a term of more than one year, including amortization of debt discount or premium and expense; and
- (j) taxes on income imposed by any taxing authority,

and shall show the net profit or loss for the financial period. R.S.O. 1960, c. 71, s. 84 (1); 1966, c. 28, s. 8 (1, 2), *amended*.

(2) Notwithstanding subsection 1, items of the natures <sup>Notes</sup> described in clauses *g* and *h* of subsection 1 may be shown by way of note to the statement of profit and loss. R.S.O. 1960, c. 71, s. 84 (2); 1966, c. 28, s. 8 (3).

(3) A corporation that is offering its securities to the public may apply to the Commission for an order permitting sales or gross operating revenue referred to in clause *a* of subsection 1 of this section or subclause *i* of clause *c* of subsection 1 of section 185 to be omitted from the statement of profit and loss or the interim financial statement, as the case may be, and the Commission may, on such terms and conditions as it may impose, permit such omission where it is satisfied that in the circumstances the disclosure of such information would be unduly detrimental to the interests of the corporation. 1966, c. 28, s. 8 (4), *part, amended*. <sup>Order for omission of sales or gross operating revenue</sup>

Mutual  
fund or  
investment  
companies  
1966, c. 142

(4) The statement of profit and loss of a mutual fund company or an investment company, as defined in the regulations under *The Securities Act, 1966*, shall also distinguish the average net investment income per share and an item of this nature may be shown by way of note to the statement of profit and loss. *New.*

Statement  
of surplus

**174.**—(1) The statement of surplus to be laid before an annual meeting shall be drawn up so as to present fairly the transactions reflected in the statement and shall show separately a statement of contributed surplus and a statement of earned surplus.

Contributed  
surplus

(2) The statement of contributed surplus shall be drawn up so as to include and distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period including,
  - i. the amount of surplus arising from the issue of shares or the reorganization of the corporation's issued capital, including *inter alia*,
    - a. the amount of premiums received on the issue of shares at a premium,
    - b. the amount of surplus realized on the purchase for cancellation of shares, and
  - ii. donations of cash or other property by shareholders.
3. The balance of such surplus at the end of the financial period.

Earned  
surplus

(3) The statement of earned surplus shall be drawn up so as to distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period and without restricting the generality of the foregoing at least the following:
  - i. The amount of the net profit or loss for the financial period.
  - ii. The amount of dividends declared on each class of shares.
  - iii. The amount transferred to or from reserves.

3. The balance of such surplus at the end of the financial period. R.S.O. 1960, c. 71, s. 85.

**175.**—(1) The statement of changes in net assets referred to in subclause *v* of clause *b* of subsection 1 of section 172 and clause *a* of subsection 1 of section 185 shall be drawn up so as to present fairly the information shown therein for the period and shall show separately at least,

- (a) net assets at beginning of the period;
- (b) net investment income or loss;
- (c) aggregate proceeds on sale of portfolio securities;
- (d) aggregate cost of portfolio securities owned at beginning of the period;
- (e) aggregate cost of purchases of portfolio securities;
- (f) aggregate cost of portfolio securities owned at end of the period;
- (g) aggregate cost of portfolio securities sold;
- (h) realized profit or loss on securities sold;
- (i) distributions, showing separately the amount out of net investment income and out of realized profits;
- (j) proceeds from shares issued;
- (k) cost of shares redeemed;
- (l) net increase or decrease in unrealized appreciation or depreciation of portfolio securities;
- (m) net assets at end of the period;
- (n) net asset value per share at end of the period;
- (o) net asset value per share at beginning of the period;
- (p) distribution per share out of net investment income;
- (q) distribution per share out of realized profits.

(2) Notwithstanding subsection 1, items of the nature described in clauses *n*, *o*, *p* and *q* of subsection 1 may be shown by way of note to the statement of changes in net assets. *New.*

Statement  
of source  
and  
application  
of funds

**176.** The statement of source and application of funds referred to in subclause vi of clause *b* of subsection 1 of section 172 and clause *b* of subsection 1 of section 185 shall be drawn up so as to present fairly the information shown therein for the period, and shall show separately at least,

(a) funds derived from,

- (i) current operations,
- (ii) sale of non-current assets, segregating investments, fixed assets and intangible assets,
- (iii) issue of debt obligations or other indebtedness maturing more than one year after issue, and
- (iv) issue of shares; and

(b) funds applied to,

- (i) purchase of non-current assets, segregating investments, fixed assets and intangible assets,
- (ii) redemption or other retirement of debt obligations or repayment of other indebtedness maturing more than one year after issue,
- (iii) redemption or other retirement of shares, and
- (iv) payment of dividends. 1966, c. 28, s. 9.

Balance  
sheet

**177.**—(1) The balance sheet to be laid before an annual meeting shall be drawn up so as to present fairly the financial position of the corporation as at the date to which it is made up and so as to distinguish severally at least the following:

1. Cash.
2. Debts owing to the corporation from its directors, officers or shareholders, except debts of reasonable amount arising in the ordinary course of its business that are not overdue having regard to its ordinary terms of credit.
3. Debts owing to the corporation, whether on account of a loan or otherwise, from subsidiaries whose financial statements are not consolidated with those of the corporation.
4. Debts owing to the corporation, whether on account of a loan or otherwise, from affiliated corporations other than subsidiaries.



5. Other debts owing to the corporation segregating those that arose otherwise than in the ordinary course of its business.
6. Inventory, stating the basis of valuation.
7. Shares, bonds, debentures and other investments owned by the corporation, except those referred to in paragraphs 8 and 9, stating their nature and the basis of their valuation and showing separately those that are marketable with a notation of their market value.
8. Securities of subsidiaries whose financial statements are not consolidated with those of the corporation, stating the basis of valuation.
9. Securities of affiliated corporations other than subsidiaries, stating the basis of valuation.
10. Lands, buildings, and plant and equipment, stating the basis of valuation, whether cost or otherwise, and, if valued on the basis of an appraisal, the date of appraisal, the name of the appraiser, the basis of the appraisal value and, if such appraisal took place within five years preceding the date to which the balance sheet is made up, the disposition in the accounts of the corporation of any amounts added to or deducted from such assets on appraisal and also the amount or amounts accumulated in respect of depreciation, obsolescence and depletion.
11. There shall be stated under separate headings, in so far as they are not written off,
  - i. expenditures on account of future business,
  - ii. any expense incurred in connection with any issue of shares,
  - iii. any expense incurred in connection with any issue of debt obligations, including any discount thereon, and
  - iv. any one or more of the following: goodwill, franchises, patents, copyrights, trade marks and other intangible assets and the amount if any, by which the value of any such assets has been written up within a period of five years preceding the date to which the balance sheet is made up.

12. The aggregate amount of any outstanding loans or guarantees under clauses *c* and *d* of subsection 2 of section 17.
13. Bank loans and overdrafts.
14. Debts owing by the corporation on loans from its directors, officers or shareholders.
15. Debts owing by the corporation to subsidiaries whose financial statements are not consolidated with those of the corporation, whether on account of a loan or otherwise.
16. Debts owing by the corporation to affiliated corporations other than subsidiaries whether on account of a loan or otherwise.
17. Other debts owing by the corporation, segregating those that arose otherwise than in the ordinary course of its business.
18. Liability for taxes, including the estimated liability for taxes in respect of the income of the period covered by the statement of profit and loss.
19. Dividends declared but not paid.
20. Deferred income.
21. Debt obligations issued by the corporation, stating the interest rate, the maturity date, the amount outstanding and the existence of sinking fund, redemption requirements and conversion rights, if any.
22. The authorized capital, giving the number of each class of shares and a brief description of each such class, and indicating therein any class of shares that is redeemable and the redemption price thereof.
23. The issued capital, giving the number of shares of each class issued and outstanding and the amount received therefor that is attributable to capital, and showing,
  - i. the number of shares of each class issued since the date of the last preceding balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration, and

ii. where any shares issued before this Act comes into force have not been fully paid,

a. the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and

b. the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid.

24. Contributed surplus.

25. Earned surplus.

26. Reserves, showing the amounts added thereto and the amounts deducted therefrom during the financial period.

27. The number of common shares purchased and the number of the common shares resold since the date of the last preceding balance sheet, giving the date of each such purchase and resale and the price at which each such purchase or resale was made. R.S.O. 1960, c. 71, s. 86 (1); 1966, c. 28, s. 10 (1-3), *amended*.

(2) Explanatory information or particulars of any item <sup>Notes</sup> mentioned in subsection 1 may be shown by way of note to the balance sheet. R.S.O. 1960, c. 71, s. 86 (2).

**178.**—(1) There shall be stated by way of note to the <sup>Notes to financial statement</sup> financial statement particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of any of the statements with any of those for the preceding period, and the effect, if material, of any such change upon the profit or loss for the period. R.S.O. 1960, c. 71, s. 87 (1).

(2) For the purpose of subsection 1, a change in accounting <sup>Change in accounting practice</sup> principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period, even though such change did not have a material effect upon the profit or loss for the period. 1962-63, c. 24, s. 3 (1).

(3) Where applicable, the following matters shall be referred <sup>Item</sup> to in the financial statement or by way of note thereto:

1. The basis of conversion of amounts from currencies other than the currency in which the financial statement is expressed.
2. Foreign currency restrictions that affect the assets of the corporation.
3. Contractual obligations that will require abnormal expenditures in relation to the corporation's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts.
4. Material contractual obligations in respect of long-term leases, including, in the year in which the transaction was effected, the principal details of any sale and lease transaction.
5. Contingent liabilities, stating their nature and, where practicable, the approximate amounts involved.
6. Any liability secured otherwise than by operation of law on any asset of the corporation, stating the liability so secured.
7. Any default of the corporation in principal, interest, sinking fund or redemption provisions with respect to any issue of its debt obligations or credit agreements.
8. The gross amount of arrears of dividends on any class of shares and the date to which such dividends were last paid.
9. Where a corporation has contracted to issue shares or has given an option to purchase shares, the class and number of shares affected, the price and the date for issue of the shares or exercise of the option.
10. Where a corporation has contracted to purchase or resell common shares, the number of shares affected and price and date for the purchase or resale.
11. The aggregate direct remuneration paid or payable by the corporation and its subsidiaries whose financial statements are consolidated with those of the corporation to the directors and the senior officers and, as a separate amount, the aggregate direct remuneration paid or payable to such directors and senior officers by the subsidiaries of the corporation whose financial statements are not consolidated with those of the corporation.



12. In the case of a holding corporation, the aggregate of any shares in, and the aggregate of any debt obligations of, the holding corporation held by subsidiary corporations whose financial statements are not consolidated with those of the holding corporation.
13. The amount of any loans by the corporation, or by a subsidiary corporation, otherwise than in the ordinary course of business, during the corporation's financial period, to the directors or officers of the corporation.
14. Any restriction by the articles or by-laws of the corporation or by contract on the payment of dividends that is significant in the light of the corporation's financial position.
15. Any event or transaction, other than one in the normal course of business operations, between the date to which the financial statement is made up and the date of the auditor's report thereon that materially affects the financial statement. R.S.O. 1960, c. 71, s. 87 (2); 1962-63, c. 24, s. 3 (2); 1966, c. 28, s. 11 (1).
16. In the case of a corporation that is offering its securities to the public, the amount of any obligation for pension benefits arising from service before the date of the balance sheet, whether or not such obligation has been provided for in the accounts of the corporation, the manner in which the corporation proposes to satisfy such obligation and the basis on which it has charged or proposes to charge the related costs against operations. 1966, c. 28, s. 11 (2), *amended*.
17. Brief particulars of any action to which the corporation is a party commenced under section 99 during the period. *New*.

(4) A note to a financial statement is a part of it. R.S.O. <sup>Idem</sup> 1960, c. 71, s. 87 (3).

**179.**—(1) A corporation, in this section referred to as “the holding corporation”, may include in the financial statement to be submitted at an annual meeting the assets and liabilities and income and expense of any one or more of its subsidiaries, making due provision for minority interests, if any, and indicating in such financial statement that it is presented in consolidated form. Consolidated financial statement

Non-  
consolidated  
financial  
statements

(2) Where the assets and liabilities and income and expense of any one or more subsidiaries of the holding corporation are not so included in the financial statement of the holding corporation,

(a) the financial statement of the holding corporation shall include a statement setting forth,

- (i) the reason why the assets and liabilities and income and expense of such subsidiary or subsidiaries are not included in the financial statement of the holding corporation,
- (ii) if there is only one such subsidiary, the amount of the holding corporation's proportion of the profit or loss of the subsidiary for the financial period coinciding with or ending in the financial period of the holding corporation, or, if there is more than one such subsidiary, the amount of the holding corporation's proportion of the aggregate profits less losses, or losses less profits, of all the subsidiaries for the respective financial periods coinciding with or ending in the financial period of the holding corporation,
- (iii) the amount included as income from such subsidiary or subsidiaries in the statement of profit and loss of the holding corporation and the amount included therein as a provision for the loss or losses of the subsidiary or subsidiaries,
- (iv) if there is only one such subsidiary, the amount of the holding corporation's proportion of the undistributed profits of the subsidiary earned since the acquisition of the shares of the subsidiary by the holding corporation to the extent that such amount has not been taken into the accounts of the holding corporation, or, if there is more than one such subsidiary, the amount of the holding corporation's proportion of the aggregate undistributed profits of all the subsidiaries earned since the acquisition of their shares by the holding corporation less its proportion of the losses, if any suffered by any subsidiary since the acquisition of its shares to the extent that such amount has not been taken into the accounts of the holding corporation,

- (v) any qualifications contained in the report of the auditor of any such subsidiary on its financial statement for the financial period ending as aforesaid, and any note or reference contained in that financial statement to call attention to a matter that, apart from the note or reference, would properly have been referred to in such a qualification, in so far as the matter that is the subject of the qualification or note is not provided for by the corporation's own financial statement and is material from the point of view of its shareholders;
- (b) if for any reason the directors of the holding corporation are unable to obtain such information as is necessary for the preparation of the statement that is to be included in the financial statement of the holding corporation, the directors who sign the financial statement shall so report in writing and their report shall be included in the financial statement in lieu of the statement;
- (c) if, in the opinion of the auditor of the holding corporation, adequate provision has not been made in the financial statement of the holding corporation for the holding corporation's proportion,
  - (i) where there is only one such subsidiary, of the loss of the subsidiary suffered since acquisition of its shares by the holding corporation, or
  - (ii) where there is more than one such subsidiary, of the aggregate losses suffered by the subsidiaries since acquisition of their shares by the holding corporation in excess of its proportion of the undistributed profits, if any, earned by any of the subsidiaries since such acquisition,

the auditor shall state in his report the additional amount that in his opinion is necessary to make full provision therefor. R.S.O. 1960, c. 71, s. 89, *amended*.

(3) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding corporation are included in the financial statement of the holding corporation, true copies of the latest financial statement of the subsidiary or subsidiaries shall be kept on hand by the holding corporation at its head office and shall be open to examination by the shareholders of the holding corporation

Copies of  
subsidiary  
statements

on request during the normal business hours of the holding corporation, but the directors of the holding corporation may by resolution refuse the right of such examination if the examination would be unduly detrimental to the interests of the corporation or the subsidiary or subsidiaries.

Setting  
aside  
resolution

(4) A resolution referred to in subsection 3 may, on the application of any shareholder,

- (a) be set aside by the Commission where the corporation is offering its securities to the public; or
- (b) be set aside by the court where the corporation is not offering its securities to the public. R.S.O. 1960, c. 71, s. 89 (2) (c), *amended*.

Insigni-  
ficant  
circum-  
stances

**180.** Notwithstanding sections 173 to 179, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance. R.S.O. 1960, c. 71, s. 88.

Reserve

**181.** In a financial statement, the term “reserve” shall be used to describe only,

- (a) amounts appropriated from earned surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred;
- (b) amounts appropriated from earned surplus pursuant to the articles or by-laws of the corporation for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred; and
- (c) amounts appropriated from earned surplus in accordance with the terms of a contract and that can be restored to the earned surplus when the conditions of the contract are fulfilled. R.S.O. 1960, c. 71, s. 91.

Audit  
committee

**182.—(1)** The directors of a corporation that is offering its securities to the public shall elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom a majority shall not be officers or employees of the corporation or an affiliate of the corporation, to hold office until the next annual meeting of the shareholders.



(2) The members of the audit committee shall elect a chair-<sup>Chairman</sup> man from among their number.

(3) The corporation shall submit the financial statement<sup>Review</sup> to the audit committee for its review and the financial statement shall thereafter be submitted to the board of directors.

(4) The auditor has the right to appear before and be heard<sup>Hearing of auditor</sup> at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

(5) Upon the request of the auditor, the chairman of the<sup>Idem</sup> audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or shareholders. *New.*

**183.** The financial statement shall be approved by the<sup>Approval by directors</sup> board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, or by the director where there is only one and the auditor's report shall be attached to or accompany the financial statement. R.S.O. 1960, c. 71, s. 92, *amended.*

**184.**—(1) A corporation that is offering its securities to<sup>Mailing of financial statement to shareholders</sup> the public shall, twenty-one days or more before the date of the annual meeting of shareholders, send by prepaid mail to each shareholder at his latest address as shown on the records of the corporation a copy of the financial statement and a copy of the auditor's report.

(2) The directors of such corporation shall send by prepaid<sup>Idem</sup> mail to each such shareholder a copy of any financial statement and auditor's report amended under subsections 4 and 5 of section 171.

(3) A shareholder of a corporation that is not offering its<sup>Financial statement, on demand</sup> securities to the public is entitled to be furnished by the corporation on demand with a copy of the documents mentioned in subsection 1. R.S.O. 1960, c. 71, s. 93, *amended.*

**185.**—(1) A corporation that is offering its securities to<sup>Comparative interim financial statement</sup> the public shall send to each shareholder a copy of a comparative interim financial statement for the six-month period that commenced on the date of incorporation or, if the corporation has completed a financial year, for the six-month period that commenced immediately after the end of the last completed financial year and for the comparable six-month period, if any, in the twelve months immediately preceding the commencement of the six-month period in respect of which such interim financial statement is issued, made up of,

1966, c. 142

- (a) in the case of a corporation that is a mutual fund company or investment company as defined in the regulations under *The Securities Act, 1966*, a statement of changes in net assets for each period that complies with section 175;
- (b) in the case of a corporation other than one referred to in clause *a*, a statement of source and application of funds for each period that complies with section 176; and
- (c) sufficient relevant financial information in summary form to present fairly the results of the operations of the corporation for each period, including,
  - (i) a statement of sales or gross operating revenue,
  - (ii) extraordinary items of income or expense,
  - (iii) net income before taxes on income imposed by any taxing authority,
  - (iv) taxes on income imposed by any taxing authority, and
  - (v) net profit or loss. 1966, c. 28, s. 13, *part, amended*.

Variation  
of period

(2) Upon the application of any interested person, the Commission may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order upon such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part a corporation from the requirements of subsection 1 or permitting the comparative interim financial statement of a corporation to be for such period other than six months that is specified in the order. *New*.

Idem

(3) There shall be stated by way of note to the interim financial statement required by subsection 1 particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of such statement with the statement for the preceding period or with the interim financial statement for a part of the preceding period, and the effect, if material, of any such change upon the profit or loss for the period covered by the interim financial statement.

Idem

(4) For the purpose of subsection 3, a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period or part thereof,

even though such change did not have a material effect upon the profit or loss for the period covered by the interim financial statement.

(5) The interim financial statement required by subsection <sup>Idem</sup> 1 shall be sent by prepaid mail to each shareholder, within sixty days of the date to which it is made up, at his latest address as shown on the records of the corporation. 1966, c. 28, s. 13, *part, amended*.

#### INVESTIGATIONS

**186.**—(1) Upon application by a shareholder of a corporation, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the corporation or the holders of its securities to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as to the court seems fit, appointing an inspector to investigate the affairs and management of the corporation or any affiliate of the corporation, or both, and to audit the accounts and records of the corporation or any affiliate thereof named in the order. R.S.O. 1960, c. 71, s. 321 (1), *amended*. <sup>Investigations and audits</sup>

(2) An order may be made under subsection 1 whether or not there has been disclosure to the shareholders of the corporation of information relating to any matter on the basis of which the order is made. *New*. <sup>Idem</sup>

(3) Every director, officer, agent, employee, banker and auditor of the corporation or of any affiliate of the corporation named in the order and every other person shall produce for the examination of the inspector all accounts and records of or relating to the corporation or affiliate in their custody or control. <sup>Production of accounts and records</sup>

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the corporation or affiliate in relation to its affairs, management, accounts and records. R.S.O. 1960, c. 71, s. 321 (7, 8), *amended*. <sup>Examination may be upon oath</sup>

(5) The court may, on the application of the inspector, on such terms and conditions as it sees fit, order any person not mentioned in subsection 4 to attend and be examined under oath before the inspector on any matter relevant to the investigation or audit. *New*. <sup>Court order for examination</sup>

(6) Every director, officer, agent or employee who refuses to produce any account or record referred to in subsection 3 and every banker or auditor who refuses to produce any account or record referred to in subsection 4 and every person examined under subsection 5 who refuses to answer any <sup>Offences</sup>

question related to the affairs and management of the corporation or any affiliate is guilty of an offence under section 259, in addition to any other liability to which he is subject. R.S.O. 1960, c. 71, s. 321 (9), *amended*.

Inspector's  
report

(7) The inspector shall make a report to the court and shall forward a copy of the report to the corporation and any affiliate of the corporation named in the order and to the person who made the application under subsection 1. *New*.

Corporation  
may appoint  
inspector  
for same  
purpose

**187.**—(1) A corporation may, by resolution passed at an annual meeting of shareholders or a general meeting of shareholders called for that purpose, appoint an inspector to investigate its affairs and management.

Powers  
and  
duties of  
inspector

(2) The inspector appointed under subsection 1 has the same powers and shall perform the same duties as an inspector appointed under section 186 and he shall make his report in such manner and to such persons as the corporation by resolution of the shareholders directs. R.S.O. 1960, c. 71, s. 321 (5, 6), *amended*.

Report  
admissible  
in  
proceedings

**188.** A copy of the report of the inspector authenticated by the court or in the case of an investigation under section 187 by the inspector is admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report. R.S.O. 1960, c. 71, s. 321 (10), *amended*.

## REORGANIZATION

### *Amendment of Articles*

Amend-  
ments

**189.**—(1) A corporation may, from time to time, amend its articles of incorporation to,

- (a) change its name;
- (b) extend, limit or otherwise vary its objects;
- (c) increase its authorized capital;
- (d) decrease,
  - (i) its authorized capital by cancelling shares, whether issued or unissued and whether with par value or without par value, or by reducing the par value of issued or unissued shares, or
  - (ii) its issued capital, if it has shares without par value,



and, where it has more capital than it requires, to authorize the repayment of capital to the shareholders to the extent that the issued capital is decreased in any way under this clause;

- (e) redivide its authorized capital into shares of lesser or greater par value;
- (f) consolidate or subdivide any of its shares without par value;
- (g) change any of its shares with par value into shares without par value;
- (h) change any of its shares without par value into shares with par value;
- (i) redesignate any class of shares;
- (j) reclassify any shares with or without par value into shares of a different class;
- (k) delete or vary any provision in its articles;
- (l) provide for any other matter or thing that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the corporation;
- (m) provide for restrictions on the transfer of the shares or any class thereof.

(2) An amendment under clauses *a* to *l* of subsection 1 <sup>Authoriza-</sup> shall be authorized by a special resolution.

(3) An amendment under clause *m* of subsection 1 shall be <sup>Idem</sup> authorized by a resolution of the board of directors and confirmed in writing,

- (a) by 100 per cent of the shareholders; or
- (b) by at least 95 per cent of the shareholders holding at least 95 per cent of the issued capital,

but, in the case of confirmation under clause *b*, the resolution is not effective until twenty-one days notice of the resolution has been given by sending the notice to each shareholder to his latest address as shown on the records of the corporation and only if at the expiration of the twenty-one days none of the shareholders has dissented in writing to the corporation.

(4) If the amendment is to delete or vary a preference, right, condition, restriction, limitation or prohibition attaching to a class of special shares or to create special shares <sup>Additional authorization for variation of rights of special shareholders</sup>

ranking in any respect in priority to or on a parity with an existing class of special shares, then, in addition to the confirmation required by subsection 2, the resolution is not effective until it has been confirmed,

- (a) by 100 per cent of the holders of the shares of such class or classes of shares in writing; or
- (b) in writing by at least 95 per cent of the holders of the shares of such class or classes of shares holding at least 95 per cent of the issued shares of such class or classes and after twenty-one days notice of the resolution and confirmation has been given by sending the notice to each of the holders of shares of such class or classes to his latest address as shown on the records of the corporation and only if at the expiration of twenty-one days none of the holders of such class or classes has dissented in writing to the corporation; or
- (c) if the articles so provide, by at least two-thirds of the votes cast at a meeting of the holders of such class or classes of shares duly called for that purpose or such greater proportion of the votes cast as the articles provide,

and by such additional authorization as the articles provide. R.S.O. 1960, c. 71, s. 33 (1-5), *amended*.

**Exception**

(5) Where an amendment to the articles that could be made under this section is made as part of an arrangement under sections 193, 194 and 195, the procedure provided for in those sections and not the procedure provided for in this section applies to the amendment.

**Special  
Act cor-  
porations  
excepted**

(6) This section does not apply to a corporation incorporated by special Act, except that a corporation incorporated by special Act may under this section amend its articles to change its name. R.S.O. 1960, c. 71, s. 33 (8, 9), *amended*.

**Articles of  
amendment**

**190.**—(1) For the purpose of bringing an amendment to the articles into effect, the corporation shall deliver to the Minister, within six months after the resolution has become effective, articles of amendment in duplicate, executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the articles of amendment, setting out,

- (a) the name of the corporation;

(b) a certified copy of the resolution;

(c) that the amendment has been duly authorized as required by subsections 2, 3 and 4 of section 189; and

(d) the date of the confirmation of the resolution by the shareholders. R.R.O. 1960, Reg. 61, s. 35, *amended*.

(2) Where the articles of amendment are to change the name of the corporation, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the corporation is not insolvent. R.R.O. 1960, Reg. 60, s. 4 (3), *amended*. <sup>Change of name</sup>

(3) Where the articles of amendment are to decrease the authorized or issued capital, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the corporation is not insolvent and that the decrease will not render the corporation insolvent, and, if required by the Minister, by evidence that establishes to his satisfaction that no creditors object to the amendment. R.S.O. 1960, c. 71, s. 34. <sup>Decrease of capital</sup>

(4) Where the articles of amendment are to make any change in the authorized or issued capital, the articles of amendment shall, if required by the Minister, be accompanied by a *pro forma* balance sheet after giving effect to the proposed change. R.R.O. 1960, Reg. 60, s. 4 (1) (d), *amended*. <sup>Pro forma balance sheet</sup>

**191.**—(1) If the articles of amendment conform to law, the Minister shall, when all prescribed fees have been paid, <sup>Certificate of amendment</sup>

(a) endorse on each duplicate of the articles of amendment the word "Filed" and the day, month and year of the filing thereof;

(b) file one of the duplicates in his office; and

(c) issue to the corporation or its agent a certificate of amendment to which he shall affix the other duplicate. *New*.

(2) The amendment becomes effective upon the date set forth in the certificate of amendment and the articles of incorporation are amended accordingly. R.S.O. 1960, c. 71, s. 4, *amended*. <sup>Effect of certificate</sup>

### *Restatement of Articles*

**192.**—(1) A corporation may at any time restate its articles of incorporation as theretofore amended. <sup>Restatement of articles</sup>

Filing of  
restatement

(2) For the purposes of bringing the restated articles into effect, the corporation shall deliver to the Minister the restated articles in duplicate, executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the restated articles, setting out,

- (a) all the provisions that are then set out in the original articles of incorporation as theretofore amended; and
- (b) a statement that the restated articles correctly set out without change the corresponding provisions of the original articles as theretofore amended.

Restatement  
of  
certificate

(3) If the restated articles of incorporation conform to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the restated articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a restated certificate of incorporation to which he shall affix the other duplicate.

Effect of  
certificate

(4) The restated articles of incorporation become effective upon the date set forth in the restated certificate and supersede the original articles of incorporation and all amendments thereto. *New.*

### *Arrangements*

Interpre-  
tation

**193.**—(1) In this section and sections 194 and 195, "arrangement" includes a reorganization of the authorized capital of a corporation and also includes,

- (a) the consolidation of shares of different classes;
- (b) the reclassification of shares of one class into shares of another class;
- (c) the variation of the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares of any class; and
- (d) a reconstruction under which a corporation transfers or sells, or proposes to transfer or to sell, to another body corporate the whole or a substantial part of its



undertaking for a consideration consisting in whole or in part of securities of the other body corporate and under which it proposes to distribute a part of that consideration among its shareholders of any class, or to cease carrying on its undertaking or that part of its undertaking so transferred or sold or so proposed to be transferred or sold. R.S.O. 1960, c. 71, s. 95 (1).

(2) Subject to section 195, a corporation may make an <sup>Arrangement</sup> arrangement,

(a) that affects the rights of all its shareholders; or

(b) that affects the rights of only holders of a particular class of its shares. R.S.O. 1960, c. 71, s. 95 (2), *amended*.

(3) Where a corporation proposing an arrangement has <sup>Subsidiaries</sup> one or more subsidiaries, any one or more of the subsidiaries may join in the arrangement with the holding corporation in one scheme. *New*.

**194.**—(1) A corporation proposing an arrangement shall <sup>Scheme of arrangement</sup> prepare a scheme for the purpose, prescribing in detail what is to be done and the manner in which it is to be effected.

(2) The corporation shall submit the scheme to the share-<sup>Submission to shareholders</sup> holders, or to the class of them affected, as the case may be, at a meeting duly called by the corporation for the purpose of considering the scheme. *New*.

(3) Where a meeting of the shareholders or of any class or <sup>Contents of notice calling meeting</sup> classes of shareholders is called under subsection 2, the notice calling the meeting shall contain a statement explaining the effect of the arrangement and in particular stating any interest of the directors of the corporation, whether as directors or as shareholders of the corporation or otherwise, and the effect thereon of the arrangement in so far as it is different from the effect on the like interest of other persons. R.S.O. 1960, c. 71, s. 95 (3).

(4) If the shareholders of the corporation or of the class <sup>Approval by shareholders</sup> or classes affected, as the case may be, present in person or by proxy at the meeting, agree, by a vote of at least three-fourths of the shares of each class represented, to the arrangement either as proposed or as varied at the meeting, the scheme shall be deemed to have been adopted. R.S.O. 1960, c. 71, s. 95 (4), *amended*.

Approval by court (5) Where the scheme is deemed to have been adopted, the corporation may apply to the court for an order approving the scheme.

Notice (6) The corporation shall notify the Minister and unless the court otherwise directs, each of its dissentient shareholders, in such manner as the court may direct, of the time and place when the application for the approving order will be made.

Counsel (7) The Minister may appoint counsel to assist the court upon the hearing of an application under this section. *New.*

Order (8) The court shall hear and determine the matter and may approve the scheme as presented or may approve it, subject to compliance with such terms and conditions as it thinks fit, having regard to the rights and interests of the dissentient shareholders, or any of them. R.S.O. 1960, c. 71, s. 95 (4, 5), *amended.*

Filing of statement to amend articles **195.**—(1) For the purpose of bringing a scheme into effect, the corporation shall, within six months of the approval of the scheme by the court, deliver to the Minister a statement in duplicate executed under the seal of the corporation and signed by two officers, or by one director and one officer, of the corporation, and verified by affidavit of one of the officers or directors signing the statement, setting out,

- (a) the name of the corporation;
- (b) a certified copy of the scheme;
- (c) a certified copy of the order of the court; and
- (d) that the terms and conditions, if any, to which the scheme is made subject by the order have been complied with.

Issuance of certificate of amendment (2) If the statement conforms to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the statement the word “Filed” and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of the filing to which he shall affix the other duplicate.

(3) Upon the issuance of the certificate of filing, the scheme becomes effective and constitutes an amendment to the articles. *New.* Effect of  
certificate  
of  
amendment

### *Amalgamations and Continuations*

**196.**—(1) Any two or more corporations, including holding or subsidiary corporations, may amalgamate and continue as one corporation. Amalga-  
mation

(2) The corporations proposing to amalgamate shall enter into an agreement for the amalgamation, prescribing its terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect, and, in particular the agreement shall set out, Agreement

- (a) the name of the amalgamated corporation;
- (b) the period of duration of the amalgamated corporation if other than perpetual;
- (c) the place in Ontario where the head office of the amalgamated corporation is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district, and giving the street and number, if any;
- (d) the authorized capital of the amalgamated corporation, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share, or, where the shares are to be without par value, the consideration, if any, exceeding which each share may not be issued or the aggregate consideration, if any, exceeding which all the shares of each class may not be issued;
- (e) where there are to be special shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions applying to them or each class of them;
- (f) the restrictions, if any, to be placed on the transfer of its shares, or any class thereof;
- (g) the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the amalgamated corporation;

- (h) the time and manner of election of the subsequent directors of the amalgamated corporation;
- (i) whether or not the by-laws of the amalgamated corporation are to be those of one of the amalgamating corporations, and, if not, a copy of the proposed by-laws of the amalgamated corporation;
- (j) the manner in which the issued shares of each of the amalgamating corporations are to be converted into issued shares of the amalgamated corporation;
- (k) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation. R.S.O. 1960, c. 71, s. 96 (1, 2), *amended*.

Shares of  
amalgamating  
corporation  
held by  
another

(3) Where shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement shall provide for the cancellation of such shares upon the amalgamation becoming effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated corporation. *New*.

Approval of  
agreement

(4) An amalgamation agreement is not effective until approved by a special resolution of each of the amalgamating corporations. R.S.O. 1960, c. 71, s. 96 (3), *amended*.

Approval  
by special  
shareholders

(5) Where the carrying out of the amalgamation agreement would result in the deletion or variation of a preference, right, condition, restriction, limitation or prohibition attaching to a class of issued special shares of any of the amalgamating corporations or in the creation of special shares of the amalgamated corporation ranking in any respect in priority to, or on a parity with, any existing class of special shares of any of the amalgamating corporations, the agreement is not effective until it is approved in the manner provided by subsection 4 of section 189 in addition to the approval required by subsection 4. *New*.

Filing of  
articles of  
amalgamation

**197.**—(1) For the purpose of bringing an amalgamation into effect, the amalgamating corporations shall, within six months after the amalgamation agreement has become effective, deliver to the Minister articles of amalgamation in duplicate executed under the seal of each of the amalgamating corporations and signed by two officers, or by one director and one officer, of each of the amalgamating corporations and verified by affidavit of one of the officers or directors signing the articles of amalgamation for each amalgamating corporation, setting out,



- (a) the names of each of the amalgamating corporations;
  - (b) a certified copy of the amalgamation agreement;
  - (c) that the agreement has been duly approved as required by section 196; and
  - (d) the dates on which the amalgamation agreement was approved by the shareholders of each of the amalgamating corporations.
- (2) The articles of amalgamation shall be accompanied by evidence that establishes to the satisfaction of the Minister that each of the amalgamating corporations is not insolvent and, if required by the Minister, a *pro forma* balance sheet after giving effect to the proposed amalgamation. Evidence of solvency
- (3) If the articles of amalgamation conform to law, the Minister shall, when all prescribed fees have been paid, Issuance of certificate of amalgamation
- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
  - (b) file one of the duplicates in his office; and
  - (c) issue to the amalgamated corporation or its agent a certificate of amalgamation to which he shall affix the other duplicate. *New.*
- (4) Upon the date set forth in the certificate of amalgamation, Effect of certificate
- (a) the amalgamation becomes effective and the amalgamating corporations are amalgamated and continue as one corporation under the terms and conditions prescribed in the amalgamation agreement;
  - (b) the amalgamated corporation possesses all the property, rights, privileges and franchises and is subject to all liabilities, contracts, disabilities and debts of each of the amalgamating corporations;
  - (c) the issued capital of the amalgamated corporation is, subject to the decrease provided for in subsection 3 of section 196, equal to the aggregate of the issued capital of each of the amalgamating corporations immediately before the amalgamation becomes effective; and

- (d) the articles of incorporation of each of the amalgamated corporations are amended to the extent necessary to give effect to the terms and conditions of the amalgamation agreement. R.S.O. 1960, c. 71, s. 96 (4), *amended*.

Certificate  
of con-  
tinuation

**198.**—(1) A corporation incorporated under the laws of any jurisdiction other than Ontario may, if it appears to the Minister to be thereunto authorized by the laws of the jurisdiction in which it was incorporated, apply to the Minister for a certificate continuing it as if it has been incorporated under this Act, and the Minister may issue the certificate of continuation on application supported by such material as appears satisfactory, and the certificate may be issued on such terms and subject to such limitations and conditions and contain such provisions as appear to the Minister to be fit and proper. R.S.O. 1960, c. 71, s. 323 (3), *amended*.

Effect of  
certificate  
of con-  
tinuation

(2) Upon the date set forth in a certificate of continuation issued under subsection 1, this Act applies to the corporation to the same extent as if it had been incorporated under this Act. *New*.

Transfer of  
Ontario  
corporations

**199.**—(1) A corporation incorporated under the laws of Ontario may, if authorized by a special resolution, by the Minister and by the laws of any other jurisdiction, apply to the proper officer of that other jurisdiction for an instrument of continuation continuing the corporation as if it had been incorporated under the laws of that other jurisdiction.

Notice

(2) The corporation shall file with the Minister a notice of the issue of the instrument of continuation, and on and after the date of the filing of the notice this Act ceases to apply to that corporation.

Application

(3) This section applies only in respect of a jurisdiction that has legislation in force that permits corporations incorporated under its laws to apply for an instrument of continuation under the laws of Ontario. 1961-62, c. 21, s. 4, *amended*.

Rights of  
creditors  
preserved

**200.** All rights of creditors against the property, rights and assets of a corporation amalgamated under section 196 or continued under section 198 and all liens upon its property, rights and assets are unimpaired by such amalgamation or continuation, and all debts, contracts, liabilities and duties of the corporation thenceforth attach to the amalgamated or continued corporation and may be enforced against it. R.S.O. 1960, c. 71, s. 324.

## DISSOLUTION

*Winding Up*

**201.** In sections 203 to 246, "contributory" means a person <sup>Interpre-</sup> who is liable to contribute to the property of a corporation <sup>tation</sup> in the event of the corporation being wound up under this Act. R.S.O. 1960, c. 71, s. 241.

*Voluntary Winding Up*

**202.** Sections 203 to 215 apply to corporations being <sup>Application</sup> wound up voluntarily. *New.* <sup>of ss. 203-215</sup>

**203.**—(1) Where the shareholders of a corporation by a <sup>Voluntary</sup> majority of the votes cast at a general meeting duly called <sup>winding up</sup> for that purpose, or by such greater proportion of the votes cast as the articles provide, pass a resolution requiring the corporation to be wound up, the corporation may be wound up voluntarily.

(2) At such meeting the shareholders shall appoint one or <sup>Appoint-</sup> more persons, who may be directors, officers or employees of <sup>ment of</sup> the corporation, as liquidator of the estate and effects of the <sup>liquidator</sup> corporation for the purpose of winding up its affairs and distributing its property, and may at that or any subsequent general meeting fix his remuneration and the costs, charges and expenses of the winding up. R.S.O. 1960, c. 71, s. 243, *amended.*

(3) On the application of any shareholder or creditor of the <sup>Review of</sup> corporation or of the liquidator, the court may review the <sup>remunera-</sup> remuneration of the liquidator and, whether or not the <sup>tion by</sup> remuneration has been fixed by resolution, the court may fix <sup>court</sup> and determine the remuneration at such amount as it thinks proper. *New.*

(4) A corporation shall file notice of a resolution requiring <sup>Publication</sup> the voluntary winding up of a corporation with the Minister <sup>of notice</sup> within ten days after the resolution has been passed and shall <sup>of</sup> publish the notice in *The Ontario Gazette* within twenty days <sup>winding up</sup> after the resolution has been passed. R.S.O. 1960, c. 71, s. 244 (1), *amended.*

**204.** A corporation being wound up voluntarily may, in <sup>Inspectors</sup> general meeting, by resolution, delegate to any committee of its shareholders, contributories or creditors, hereinafter referred to as inspectors, the power of appointing the liquidator and filling any vacancy in the office of liquidator, or may by a like resolution enter into any arrangement with its creditors with respect to the powers to be exercised by the liquidator and the manner in which they are to be exercised. R.S.O. 1960, c. 71, s. 245.

Vacancy in  
office of  
liquidator

**205.** If a vacancy occurs in the office of liquidator by death, resignation or otherwise, the shareholders in general meeting may, subject to any arrangement the corporation may have entered into with its creditors upon the appointment of inspectors, fill such vacancy, and a general meeting for that purpose may be called by the continuing liquidator, if any, or by any shareholder or contributory, and shall be deemed to have been duly held if called in the manner prescribed by the articles or by-laws of the corporation, or, in default thereof, in the manner prescribed by this Act, for calling general meetings of the shareholders of the corporation. R.S.O. 1960, c. 71, s. 246, *amended*.

Removal of  
liquidator

**206.** The shareholders of the corporation may by a majority of the votes cast at a general meeting called for that purpose remove a liquidator appointed under section 203, 204 or 205, and in such case shall appoint another liquidator in his stead. R.S.O. 1960, c. 71, s. 247.

Commence-  
ment of  
winding up

**207.** A voluntary winding up commences at the time of the passing of the resolution requiring the winding up. R.S.O. 1960, c. 71, s. 248.

Corporation  
to cease  
business

**208.** A corporation being wound up voluntarily shall, from the commencement of its winding up, cease to carry on its undertaking, except in so far as may be required as beneficial for the winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidator, or alterations in the status of the shareholders of the corporation, taking place after the commencement of its winding up are void, but its corporate existence and all its corporate powers, notwithstanding that it is otherwise provided by its articles or by-laws, continue until its affairs are wound up. R.S.O. 1960, c. 71, s. 249, *amended*.

No proceed-  
ings against  
corporation  
after  
voluntary  
winding up  
except  
by leave

**209.** After the commencement of a voluntary winding up,

- (a) no action or other proceeding shall be commenced against the corporation; and
- (b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court imposes. R.S.O. 1960, c. 71, s. 250.

List of  
contribu-  
tories  
and calls

**210.—(1)** Upon a voluntary winding up, the liquidator,

- (a) shall settle the list of contributories;



(b) may, before he has ascertained the sufficiency of the property of the corporation, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay any sum that he considers necessary for satisfying the liabilities of the corporation and the costs, charges and expenses of winding up and for adjusting the rights of the contributories among themselves.

(2) A list settled by the liquidator under clause *a* of sub-section 1 is *prima facie* proof of the liability of the persons named therein to be contributories. List  
prima facie  
proof

(3) The liquidator in making a call under clause *b* of sub-section 1 may take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the call. R.S.O. 1960, c. 71, s. 251. Default  
on calls

**211.**—(1) The liquidator may, during the continuance of the voluntary winding up, call general meetings of the shareholders of the corporation for the purpose of obtaining their approval by resolution, or for any other purpose he thinks fit. Meetings of  
corporation  
during  
winding up

(2) Where a voluntary winding up continues for more than one year, the liquidator shall call a general meeting of the shareholders of the corporation at the end of the first year and of each succeeding year from the commencement of the winding up, and he shall lay before the meeting an account showing his acts and dealings and the manner in which the winding up has been conducted during the immediately preceding year. R.S.O. 1960, c. 71, s. 252, *amended*. Where  
winding up  
continues  
more than  
one year

**212.** The liquidator, with the approval of a resolution of the shareholders of the corporation passed in general meeting or with the approval of the inspectors, may make such compromise or other arrangement as the liquidator thinks expedient with any creditor or person claiming to be a creditor or having or alleging that he has a claim, present or future, certain or contingent, liquidated or unliquidated, against the corporation or whereby the corporation may be rendered liable. R.S.O. 1960, c. 71, s. 253, *amended*. Arrange-  
ments  
with  
creditors

**213.** The liquidator may, with the approval referred to in section 212, compromise all debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the corporation and any contributory, alleged contributory or other debtor or person who may be liable to the corporation and all questions in any way relating to or affecting the property of the corporation, Power to  
compromise  
with  
debtors  
and con-  
tributories

or the winding up of the corporation, upon the receipt of such sums payable at such times and generally upon such terms as are agreed, and the liquidator may take any security for the discharge of such debts or liabilities and give a complete discharge in respect thereof. R.S.O. 1960, c. 71, s. 254, *amended*.

Power to accept shares, etc., as consideration for sale of property to another body corporate

**214.—**(1) Where a corporation is proposed to be or is in the course of being wound up voluntarily and it is proposed to transfer the whole or a portion of its business or property to another body corporate, referred to in this subsection as the purchasing corporation, the liquidator of the first-mentioned corporation, with the approval of a resolution of the shareholders passed in general meeting of the corporation conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, may receive, in compensation or in part-compensation for the transfer, cash or shares or other like interest in the purchasing corporation or any other body corporate for the purpose of distribution among the creditors or shareholders of the corporation that is being wound up in the manner set forth in the arrangement, or may, in lieu of receiving cash or shares or other like interest, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing corporation or any other body corporate.

Confirmation of sale or arrangement

(2) A transfer made or arrangement entered into by the liquidator under this section is not binding on the shareholders of the corporation that is being wound up unless the shareholders or classes of shareholders, as the case may be, at a general meeting duly called for the purpose, by votes representing at least three-fourths of the shares or of each class of shares represented at the meeting, approve the transfer or arrangement and unless the transfer or arrangement is approved by an order made by the court on the application of the corporation.

Where resolution not invalid

(3) No resolution is invalid for the purposes of this section because it was passed before or concurrently with a resolution for winding up the corporation or for appointing the liquidator. R.S.O. 1960, c. 71, s. 255, *amended*.

Account of voluntary winding up to be made by liquidator to a general meeting

**215.—**(1) The liquidator shall make up an account showing the manner in which the winding up has been conducted and the property of the corporation disposed of, and thereupon shall call a general meeting of the shareholders of the corporation for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator, and the meeting shall be called in the manner

prescribed by the articles or by-laws or, in default thereof, in the manner prescribed by this Act for the calling of general meetings of shareholders.

(2) The liquidator shall within ten days after the holding of the meeting file a notice with the Minister stating that the meeting was held and the date thereof. Notice of holding of meeting

(3) Subject to subsection 4, on the expiration of three months from the date of the filing of the notice the corporation is dissolved. Dissolution

(4) At any time during the three-month period mentioned in subsection 3, the court may, on the application of the liquidator or any other person interested, make an order deferring the date on which the dissolution of the corporation is to take effect to a date fixed in the order, and in such event the corporation is dissolved on the date so fixed. R.S.O. 1960, c. 71, s. 279 (1-4), *amended*. Extension

(5) Notwithstanding anything in this Act, the court at any time after the affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order. R.S.O. 1960, c. 71, s. 280 (1), *amended*. Dissolution by court order

(6) The person on whose application an order was made under subsection 4 or 5 shall within ten days after it was made file with the Minister a certified copy of the order. R.S.O. 1960, c. 71, s. 279 (5), *amended*. Copy of extension order to be filed

#### *Winding up by Court Order*

**216.** Sections 217 to 228 apply to corporations being wound up by order of the court. *New*. Application of ss. 217-228

**217.** A corporation may be wound up by order of the court, Winding up by court

- (a) where the shareholders by a majority of the votes cast at a general meeting called for that purpose or by such greater proportion of the votes cast as the articles provide pass a resolution authorizing an application to be made to the court to wind up the corporation;
- (b) where proceedings have been begun to wind up voluntarily and it appears to the court that it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court;



(c) where it is proved to the satisfaction of the court that the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its business and that it is advisable to wind it up; or

(d) where in the opinion of the court it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up. R.S.O. 1960, c. 71, s. 256, *amended*.

Who may  
apply

**218.**—(1) A winding-up order may be made upon the application of the corporation or of a shareholder or, where the corporation is being wound up voluntarily, of the liquidator or of a contributory or of a creditor having a claim of \$1,000 or more.

Notice

(2) Except where the application is made by the corporation, four days notice of the application shall be given to the corporation before the making of the application. R.S.O. 1960, c. 71, s. 257, *amended*.

Power  
of court

**219.** The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as is deemed just, and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise such powers of the court as are necessary for the reference. R.S.O. 1960, c. 71, s. 258, *amended*.

Appoint-  
ment of  
liquidator

**220.**—(1) The court in making the winding-up order may appoint one or more persons as liquidator of the estate and effects of the corporation for the purpose of winding up its affairs and distributing its property.

Remunera-  
tion

(2) The court may at any time fix the remuneration of the liquidator.

Vacancy

(3) If a liquidator appointed by the court dies or resigns or the office becomes vacant for any reason, the court may by order fill the vacancy. R.S.O. 1960, c. 71, s. 259 (1-3).

Notice of  
appoint-  
ment

(4) A liquidator appointed by the court under this section shall forthwith give to the Minister notice in writing of his appointment and shall, within twenty days of his appointment, publish the notice in *The Ontario Gazette*. *New*.

Removal of  
liquidator

**221.** The court may by order remove for cause a liquidator appointed by it, and in such case shall appoint another liquidator in his stead. R.S.O. 1960, c. 71, s. 259 (4).



**222.** The costs, charges and expenses of a winding up by order of the court shall be taxed by a taxing officer of the Supreme Court at Toronto. R.S.O. 1960, c. 71, s. 260. Costs and expenses

**223.** Where a winding-up order is made by the court without prior voluntary winding-up proceedings, the winding up shall be deemed to commence at the time of the service of notice of the application, and, where the application is made by the corporation, at the time the application is made. R.S.O. 1960, c. 71, s. 261. Commencement of winding up

**224.** Where a winding-up order has been made by the court, proceedings for the winding up of the corporation shall be taken in the same manner and with the like consequences as provided for a voluntary winding up, except that the list of contributories shall be settled by the court unless it has been settled by the liquidator before the winding-up order, in which case the list is subject to review by the court, and except that all proceedings in the winding up are subject to the order and direction of the court. R.S.O. 1960, c. 71, s. 262. Proceedings in winding up after order

**225.—(1)** Where a winding-up order has been made by the court, the court may direct meetings of the shareholders of the corporation to be called, held and conducted in such manner as the court thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of it to the court. Meetings of shareholders of corporation may be ordered

(2) Where a winding-up order has been made by the court, the court may require any contributory for the time being settled on the list of contributories, or any director, officer, employee, trustee, receiver, banker or agent of the corporation to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any sum or balance, documents, records, estate or effects that are in his hands and to which the corporation is *prima facie* entitled. Order for delivery by contributories and others of property, etc.

(3) Where a winding-up order has been made by the court, the court may make an order for the inspection of the documents and records of the corporation by its creditors and contributories, and any documents and records in the possession of the corporation may be inspected in conformity with the order. R.S.O. 1960, c. 71, s. 263, *amended*. Inspection of documents and records

**226.** After the commencement of a winding up by order of the court, Proceedings against corporation after court winding up

- (a) no action or other proceeding shall be proceeded with or commenced against the corporation; and

- (b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court imposes. R.S.O. 1960, c. 71, s. 264.

Provision  
for dis-  
charge of  
liquidator  
and distri-  
bution by  
the court

**227.**—(1) Where the realization and distribution of the property of a corporation being wound up under an order of the court has proceeded so far that in the opinion of the court it is expedient that the liquidator should be discharged and that the property of the corporation remaining in his hands can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to such officer or person as the court directs, of such property, and it shall be realized and distributed by or under the direction of the court among the persons entitled thereto in the same way as nearly as may be as if the distribution were being made by the liquidator.

Disposal of  
documents  
and  
records

(2) In such case, the court may make an order directing how the documents and records of the corporation and of the liquidator are to be disposed of, and may order that they be deposited in court or otherwise dealt with as the court thinks fit. R.S.O. 1960, c. 71, s. 283, *amended*.

Order for  
dissolution

**228.**—(1) The court at any time after the affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order.

Copy of  
dissolution  
order to  
be filed

(2) The person on whose application the order was made shall within ten days after it was made file with the Minister a certified copy of the order. R.S.O. 1960, c. 71, s. 280 (1, 2), *amended*.

### *Winding Up Generally*

Application  
of ss. 230-  
246

**229.** Sections 230 to 246 apply to corporations being wound up voluntarily or by order of the court. R.S.O. 1960, c. 71, s. 265.

Where no  
liquidator

**230.** Where there is no liquidator,

- (a) the court may by order on the application of a shareholder of the corporation appoint one or more persons as liquidator; and

- (b) the estate and effects of the corporation shall be under the control of the court until the appointment of a liquidator. R.S.O. 1960, c. 71, s. 266, *amended*.

**231.—(1)** Upon a winding up,

Consequences of winding up

- (a) the liquidator shall apply the property of the corporation in satisfaction of all its debts, obligations and liabilities and, subject thereto, shall distribute the property rateably among the shareholders according to their rights and interests in the corporation;
- (b) in distributing the property of the corporation, debts to employees of the corporation for services performed for it due at the commencement of the winding up or within one month before, not exceeding three months wages and for vacation pay accrued for not more than twelve months under *The Employment Standards Act, 1968* and the regulations thereunder or under a collective agreement made by the corporation, shall be paid in priority to the claims of the ordinary creditors, and such persons are entitled to rank as ordinary creditors for the residue of their claims;
- (c) all the powers of the directors cease upon the appointment of a liquidator, except in so far as the liquidator may sanction the continuance of such powers.

(2) Section 52 of *The Trustee Act* applies *mutatis mutandis* to liquidators. R.S.O. 1960, c. 71, s. 267, *amended*.

Distribution of property  
R.S.O. 1960  
c. 408

**232.** The costs, charges and expenses of a winding up, including the remuneration of the liquidator, are payable out of the property of the corporation in priority to all other claims. R.S.O. 1960, c. 71, s. 268.

Payment of costs and expenses

**233.—(1)** A liquidator may,

Powers of liquidators

- (a) bring or defend any action, suit or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the corporation;
- (b) carry on the business of the corporation so far as may be required as beneficial for the winding up of the corporation;
- (c) sell the real and personal property, effects and things in action of the corporation by public auction or private sale;

- (d) do all acts and execute, in the name and on behalf of the corporation, all documents, and for that purpose use the seal of the corporation;
- (e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation;
- (f) raise upon the security of the property of the corporation any requisite money;
- (g) take out in his official name letters of administration of the estate of any deceased contributory and do in his official name any other act that is necessary for obtaining payment of any money due from a contributory or from his estate and which act cannot be done conveniently in the name of the corporation; and
- (h) do and execute all such other things as are necessary for winding up the affairs of the corporation and distributing its property.

Bills of exchange, etc., to be deemed drawn in the course of business

(2) The drawing, accepting, making or endorsing of a bill of exchange or promissory note by the liquidator on behalf of a corporation has the same effect with respect to the liability of the corporation as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of the corporation in the course of carrying on its business.

Where moneys deemed to be due to liquidator

(3) Where the liquidator takes out letters of administration or otherwise uses his official name for obtaining payment of any money due from a contributory, such money shall be deemed, for the purpose of enabling him to take out such letters or recover such money, to be due to the liquidator himself. R.S.O. 1960, c. 71, s. 269, *amended*.

Acts by more than one liquidator

**234.** Where more than one person is appointed as liquidator, any power conferred by sections 202 to 246 on a liquidator may be exercised by such one or more of such persons as may be determined by the resolution or order appointing them or, in default of such determination, by any number of them not fewer than two. *New*.

Nature of liability of contributory

**235.** The liability of a contributory creates a debt accruing due from him at the time his liability commenced, but payable at the time or respective times when calls are made for enforcing such liability. R.S.O. 1960, c. 71, s. 270.



**236.** If a contributory dies before or after he had been placed on the list of contributories, his personal representative is liable in due course of administration to contribute to the property of the corporation in discharge of the liability of the deceased contributory and shall be a contributory accordingly. R.S.O. 1960, c. 71, s. 271, *amended*. Who liable in case of his death

**237.**—(1) The liquidator shall deposit all moneys that he has belonging to the corporation and amounting to \$100 or more in any chartered bank of Canada or in the Province of Ontario Savings Office or in any trust company or loan corporation that is registered under *The Loan and Trust Corporations Act*. Deposit of moneys  
R.S.O. 1960, c. 222

(2) If inspectors have been appointed, the depository under subsection 1 shall be one approved by them. Approval of bank by inspectors

(3) Such deposit shall not be made in the name of the liquidator individually, but a separate deposit account shall be kept of the money belonging to the corporation in his name as liquidator of the corporation and in the name of the inspectors, if any, and such money shall be withdrawn only by order for payment signed by the liquidator and one of the inspectors, if any. Separate deposit account to be kept; withdrawal from account

(4) At every meeting of the shareholders of the corporation the liquidator shall produce a pass-book or statement of account showing the amount of the deposits, the dates at which they were made, the amounts withdrawn and the dates of withdrawal, and mention of such production shall be made in the minutes of the meeting, and the absence of such mention is admissible in evidence as *prima facie* proof that the pass-book or statement of account was not produced at the meeting. Liquidators to produce bank pass-book

(5) The liquidator shall also produce the pass-book or statement of account whenever so ordered by the court upon the application of the inspectors, if any, or of a shareholder of the corporation. R.S.O. 1960, c. 71, s. 272, *amended*. Idem

**238.** For the purpose of proving claims, sections 25, 26 and 27 of *The Assignments and Preferences Act* apply *mutatis mutandis*, except that, where the word "judge" is used therein, the word "court" as used in this Act shall be substituted. R.S.O. 1960, c. 71, s. 273. Proving claim  
R.S.O. 1960, c. 25

**239.** Upon the application of the liquidator or of the inspectors, if any, or of any creditors, the court, after hearing such parties as it directs to be notified or after such steps as the court prescribes have been taken, may by order give its direction in any matter arising in the winding up. R.S.O. 1960, c. 71, s. 274. Application for direction

Examination  
of persons  
as to  
estate

**240.**—(1) The court may at any time after the commencement of the winding up summon to appear before the court or liquidator any director, officer or employee of the corporation or any other person known or suspected to have in his possession any of the estate or effects of the corporation, or alleged to be indebted to it, or any person whom the court thinks capable of giving information concerning its trade, dealings, estate or effects.

Damages  
against  
delinquent  
directors,  
etc.

(2) Where in the course of the winding up it appears that a person who has taken part in the formation or promotion of the corporation or that a past or present director, officer, employee, liquidator or receiver of the corporation has misapplied or retained in his own hands, or become liable or accountable for, property of the corporation, or has committed any misfeasance or breach of trust in relation to it, the court may, on the application of the liquidator or of any creditor, shareholder or contributory, examine into the conduct of that person and order him to restore the property so misapplied or retained, or for which he has become liable or accountable, or to contribute such sum to the property of the corporation by way of compensation in respect of such misapplication, retention, misfeasance or breach of trust, or both, as the court thinks just. R.S.O. 1960, c. 71, s. 275, *amended*.

Proceedings  
by share-  
holders

**241.**—(1) Where a shareholder of the corporation desires to cause any proceeding to be taken that, in his opinion, would be for the benefit of the corporation, and the liquidator, under the authority of the shareholders or of the inspectors, if any, refuses or neglects to take such proceeding after being required so to do, the shareholder may obtain an order of the court authorizing him to take such proceeding in the name of the liquidator or corporation, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator or corporation as the court prescribes.

Benefits,  
when for  
shareholders

(2) Any benefit derived from a proceeding under subsection 1 belongs exclusively to the shareholder causing the institution of the proceeding for his benefit and that of any other shareholder who has joined him in causing the institution of the proceeding.

when for  
corporation

(3) If before the order is granted the liquidator signifies to the court his readiness to institute the proceeding for the benefit of the corporation, the court shall make an order prescribing the time within which he is to do so, and in that case the advantage derived from the proceeding, if instituted within such time, belongs to the corporation. R.S.O. 1960, c. 71, s. 276, *amended*.

**242.** The rights conferred by this Act are in addition to any other right to institute proceedings against any contributory, or against any debtor of the corporation, for the recovery of any sum due from such contributory or debtor or his estate. R.S.O. 1960, c. 71, s. 277, *amended*. Rights conferred by Act to be in addition to other powers

**243.** At any time during a winding up, the court, upon the application of a shareholder, creditor or contributory and upon proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed, may make an order staying the proceedings altogether or for a limited time on such terms and subject to such conditions as the court thinks fit. R.S.O. 1960, c. 71, s. 278. Stay of winding-up proceedings

**244.**—(1) Where the liquidator is unable to pay all the debts of the corporation because a creditor is unknown or his whereabouts is unknown, the liquidator may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and thereupon subsections 5 and 6 of section 248 apply thereto. Where creditor unknown

(2) A payment under subsection 1 shall be deemed to be in satisfaction of the debt for the purposes of winding up. R.S.O. 1960, c. 71, s. 281 (3, 4), *amended*. Idem

**245.**—(1) Where the liquidator is unable to distribute rateably the property of the corporation among the shareholders because a shareholder is unknown or his whereabouts is unknown, the share of the property of the corporation of such shareholder may, by agreement with the Public Trustee, be delivered or conveyed by the liquidator to the Public Trustee to be held in trust for the shareholder, and thereupon subsections 5 and 6 of section 248 apply thereto. Where shareholder unknown

(2) A delivery or conveyance under subsection 1 shall be deemed to be a distribution to that shareholder of his rateable share for the purposes of the winding up. R.S.O. 1960, c. 71, s. 281 (1, 2), *amended*. Idem

**246.**—(1) Where a corporation has been wound up under sections 202 to 245 and is about to be dissolved, its documents and records and those of the liquidator may be disposed of as it by resolution directs in case of voluntary winding up, or as the court directs in case of winding up under an order. Disposal of records, etc., after winding up

(2) After the expiration of five years from the date of the dissolution of the corporation, no responsibility rests on it or the liquidator, or anyone to whom the custody of the documents and records has been committed, by reason that the When responsibility as to custody of records, etc., to cease



same or any of them are not forthcoming to any person claiming to be interested therein. R.S.O. 1960, c. 71, s. 282, *amended*.

*Other Dissolution*

Voluntary  
dissolution

**247.** A corporation may be dissolved upon the authorization of,

- (a) a majority of the votes cast at a general meeting of the shareholders of the corporation duly called for the purpose or by such other proportion of the votes cast as the articles provide;
- (b) the consent in writing of all the shareholders entitled to vote at such meeting; or
- (c) all its incorporators or their personal representatives at any time within two years after the date of issuance of its certificate of incorporation where the corporation has not commenced business and has not issued any shares. R.S.O. 1960, c. 71, s. 327 (1) (a), *amended*.

Articles of  
dissolution  
where  
corporation  
active

**248.—**(1) For the purpose of bringing the dissolution authorized under clause *a* or *b* of section 247 into effect, the corporation shall deliver to the Minister articles of dissolution in duplicate, executed under the seal of the corporation and signed by two officers or by one director and one officer, of the corporation and verified by affidavit of one of the officers or directors signing the articles of dissolution, setting out,

- (a) the name of the corporation;
- (b) that its dissolution has been duly authorized under clause *a* or *b* of section 247;
- (c) that it has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection 3 or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;
- (d) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute among its shareholders or that it has distributed its remaining property rateably among its shareholders according to their rights and interests in the corporation or in accordance with subsection 4 where applicable;



- (e) that there are no proceedings pending in any court against it; and
- (f) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office. R.S.O. 1960, c. 71, s. 327 (1), *part, amended*.

(2) For the purpose of bringing a dissolution authorized under clause *c* of section 247 into effect, the corporation shall deliver to the Minister articles of dissolution in duplicate, signed by all its incorporators or their personal representatives and verified by affidavit of one of them setting out,

Articles of  
dissolution  
where  
corporation  
never  
active

- (a) the name of the corporation;
- (b) the date of the issuance of its certificate of incorporation;
- (c) that the corporation has not commenced business;
- (d) that none of its shares has been issued;
- (e) that dissolution has been duly authorized under clause *c* of section 247;
- (f) that it has no debts, obligations or liabilities;
- (g) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute or that it has distributed its remaining property to the persons entitled thereto;
- (h) that there are no proceedings pending in any court against it; and
- (i) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office. *New*.

(3) Where a corporation authorizes its dissolution and a creditor is unknown or his whereabouts is unknown, the corporation may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and such payment shall be deemed to be due provision for the debt for the purposes of clause *c* of subsection 1.

Where  
creditor  
unknown

Where  
shareholder  
unknown

(4) Where a corporation authorizes its dissolution and a shareholder is unknown or his whereabouts is unknown, it may, by agreement with the Public Trustee, deliver or convey his share of the property to the Public Trustee to be held in trust for him, and such delivery or conveyance shall be deemed to be a distribution to that shareholder of his rateable share for the purposes of the dissolution.

Power to  
convert

(5) If the share of the property so delivered or conveyed to the Public Trustee under subsection 4 is in a form other than cash, the Public Trustee may at any time, and within ten years after such delivery or conveyance shall, convert it into cash.

Payment  
to person  
entitled

(6) If the amount paid under subsection 3 or the share of the property delivered or conveyed under subsection 4 or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled thereto within ten years after it was so delivered, conveyed or paid, it shall be delivered, conveyed or paid to him, but, if not so claimed, it vests in the Public Trustee for the use of Ontario, and, if the person beneficially entitled thereto at any time thereafter establishes his right thereto to the satisfaction of the Lieutenant Governor in Council, an amount equal to the amount so vested in the Public Trustee shall be paid to him. R.S.O. 1960, c. 71, s. 327 (3-6), *amended*.

Certificate  
of  
dissolution

**249.**—(1) If the articles of dissolution conform to law, the Minister shall, when all prescribed fees have been paid and all taxes payable by the corporation to the Treasurer of Ontario have been paid,

- (a) endorse on each duplicate of the articles of dissolution the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the corporation or its agent a certificate of dissolution to which he shall affix the other duplicate.

Effect of  
certificate

(2) The dissolution becomes effective and the corporation is dissolved upon the date set forth in the certificate of dissolution. *New.*

Cancellation  
of certificate  
etc., by  
Minister

**250.** Where sufficient cause is shown to the Minister, he may, after he has given the corporation an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any certificate issued by him under this Act, and,

- (a) in the case of the cancellation of a certificate of incorporation, the corporation is dissolved on the date fixed in the order;
- (b) in the case of the cancellation of any other certificate, the matter that became effective upon the issuance of the certificate ceases to be in effect from the date fixed in the order. R.S.O. 1960, c. 71, s. 326 (1), *amended*.

**251.**—(1) Where a corporation is in default in filing an annual return under *The Corporations Information Act*, or a predecessor thereof, the Minister shall send notice of the default to the corporation by mail within one year after the default. Notice of default in filing returns  
R.S.O. 1960, c. 72

(2) Where a corporation is in default in filing an annual return for a period of two years, the Minister may give notice, by registered mail to the corporation or by publication once in *The Ontario Gazette*, that an order dissolving the corporation will be issued unless the corporation files the annual return within one year after the giving of the notice. Notice of default in filing returns

(3) Upon default in compliance with the notice given under subsection 2, the Minister may by order cancel the certificate of incorporation and, subject to subsection 4, the corporation is dissolved on the date fixed in the order. Dissolution for default

(4) Where a corporation is dissolved under subsection 3, the Minister, on the application of any interested person immediately before the dissolution, made within two years after the date of dissolution, may in his discretion by order, on such terms and conditions as he sees fit to impose, revive the corporation, and thereupon the corporation, subject to the terms and conditions of the order and to any rights acquired by any person after its dissolution, is restored to its legal position, including all its property, rights, privileges and franchises, and is subject to all its liabilities, contracts, disabilities and debts, as at the date of its dissolution, in the same manner and to the same extent as if it had not been dissolved. R.S.O. 1960, c. 71, s. 326 (2,3); 1964, c. 10, s. 8, *amended*. Revival

**252.**—(1) Notwithstanding the dissolution of a corporation under section 249, 250 or 251 or by the expiration of the period of its duration, Suits after dissolution

- (a) any action, suit or other proceeding commenced by or against the corporation before its dissolution may be proceeded with as if the corporation had not been dissolved;

(b) any action, suit or other proceeding may be brought against the corporation within two years after its dissolution as if the corporation had not been dissolved; and

(c) any property that would have been available to satisfy any judgment, order or other decision if the corporation had not been dissolved remains available for such purpose. 1962-63, c. 24, s. 12, *amended*.

Service  
after  
dissolution

(2) For the purposes of this section, the service of any process on a corporation after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Department as being a director or officer of the corporation before the dissolution. *New*.

Liability  
of share-  
holders to  
creditors

**253.**—(1) Notwithstanding the dissolution of a corporation, each of the shareholders among whom its property has been distributed remains liable to its creditors to the extent of the amount received by him upon the distribution, and an action in a court of competent jurisdiction to enforce such liability may be brought against him within two years from the date of the dissolution and not thereafter.

Action  
against  
one share-  
holder as  
representing  
class

(2) Where there are numerous shareholders, the court referred to in subsection 1 may permit an action to be brought against one or more shareholders as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such shareholders as are found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined. R.S.O. 1960, c. 71, s. 329, *amended*.

Forfeiture  
of un-  
disposed  
property

**254.** Subject to section 252, any real or personal property of a corporation that has not been disposed of at the date of its dissolution is forfeit to the Crown. R.S.O. 1960, c. 71, s. 330, *amended*.

#### GENERAL

Notice to  
directors  
and  
shareholders

**255.**—(1) Subject to the articles or by-laws of a corporation,

(a) a notice or other document required to be given or sent by a corporation to a shareholder or director may be delivered personally or sent by prepaid mail addressed to the shareholder or director at his latest address as shown on the records of the corporation; and



- (b) a notice or other document sent by mail by a corporation to a shareholder or director shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. R.S.O. 1960, c. 71, s. 332, *amended*.

(2) Except where otherwise provided in this Act, a notice or document required to be given or sent to a corporation may be sent to the corporation by prepaid mail at its head office as shown on the records of the Department and shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. Notice to corporation

(3) Where a notice is required by this Act to be given, the giving of the notice may be waived or the time for the notice may be waived or abridged with the consent in writing of every person entitled thereto, whether before or after the time prescribed. *New*. Waiver of notice and abridgement of times

**256.**—(1) Every person who makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omission of which makes the statement false or misleading is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1960, c. 71, s. 339 (1), *amended*. Offence, false statements

(2) No person is guilty of an offence under subsection 1 if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading. *New*. Defence

**257.**—(1) Every person who fails to file with the Minister any document required by this Act to be filed with him is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or, if such person is a body corporate, to a fine of not more than \$20,000. Offence, failure to file

(2) Where a body corporate is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000. *New*. Idem

**258.** No proceeding under section 256 or 257 shall be commenced except with the consent or under the direction of the Minister. *New*. Consent

Offence,  
general

**259.**—(1) Except where otherwise provided, every person who commits an act contrary to or fails or neglects to comply with any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or, if such person is a body corporate, to a fine of not more than \$10,000.

Idem

(2) Where a body corporate is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in the offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000. R.S.O. 1960, c. 71, s. 340, *amended*.

Limitation

**260.**—(1) No proceeding under section 256 or 257 or under section 259 for a contravention of section 161 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Minister as certified by him. R.S.O. 1960, c. 71, s. 339 (2), *amended*.

Idem

(2) No proceedings under section 259 for a contravention of section 148 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(3) Subject to subsections 1 and 2, no proceeding for an offence under this Act or the regulations shall be commenced more than one year after the time when the subject-matter of the offence arose. *New*.

Orders for  
compliance

**261.**—(1) Where a corporation or a director, officer or employee of a corporation does not comply with any provision of this Act, the articles or the by-laws of the corporation, a shareholder or a creditor of the corporation, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, may apply to the court for an order directing the corporation, director, officer or employee, as the case may be, to comply with such provision, and upon such an application the court may make such order or such other order as the court thinks fit. R.S.O. 1960, c. 71, s. 341, *amended*.

Idem

(2) Where it appears to the Commission that any person or corporation to which section 117, subsection 1 of section 118 or section 148 applies has failed to comply with or is contravening any such provision, notwithstanding the imposition of any penalty in respect of such non-compliance or contravention, the Commission may apply to the court for an order directing such person or corporation to comply with such provision or for an order restraining such person or corporation from

contravening such provision and upon such application the court may make such order or such other order as the court thinks fit. 1968-69, c. 17, s. 10, *amended*.

**262.** The Minister may delegate in writing any of his duties or powers under this Act to any public servant in the Department. R.S.O. 1960, c. 71, s. 5, *part, amended*. Powers of Minister

**263.**—(1) The Minister may require any fact relevant to the performance of his duties under this Act or the regulations to be verified by affidavit or otherwise. Proof by affidavit

(2) For the purpose of holding a hearing under this Act, the Minister may administer oaths to witnesses and require them to give evidence under oath. R.S.O. 1960, c. 71, s. 7, *amended*. Oaths at hearings

**264.** The Minister shall cause notice to be published forthwith in *The Ontario Gazette*, Publication of notices in *The Ontario Gazette*

- (a) of the issue of every certificate under section 5, 8, 31, 191, 195, 197, 198 or 249;
- (b) of the issue of every order under section 161, 250 or 251;
- (c) of the filing of a certified copy of an order under subsection 6 of section 215 or subsection 2 of section 228; and
- (d) of the filing of a notice by a liquidator under subsection 2 of section 215 or by a corporation under subsection 4 of section 203. R.S.O. 1960, c. 71, s. 10, *amended*.

**265.**—(1) Upon payment of the prescribed fee, any person is entitled to examine any document filed with or issued by the Minister under this Act, and to make extracts therefrom. Searches

(2) Upon payment of the prescribed fee, the Minister shall furnish any person with a certificate as to whether or not a document has been filed with or issued by him under this Act or any predecessor thereof or with a certified copy of any such document. *New*. Certifications by Minister

**266.**—(1) Where this Act requires or authorizes the Minister to issue a certificate or certify any fact, the certificate shall be issued under the seal of the Minister and shall be signed by him or by such officer of the Department as is designated by the regulations. *New*. Execution of certificates by Minister



Certificates  
as  
evidence

(2) Any certificate purporting to be under the seal of the Minister and signed by a person authorized by or under subsection 1, or any certified copy, is receivable in evidence in any action, prosecution or other proceeding as *prima facie* proof of the facts so certified without proof of the seal or of the signature or the official position of the person appearing to have signed the certificate. R.S.O. 1960, c. 71, s. 333, *amended*.

Notice of  
refusal  
to file

**267.**—(1) Where the Minister refuses to file any articles or any other document required by this Act to be filed by him before it becomes effective, he shall give written notice to the person who delivered the articles or other document of his refusal, specifying the reasons therefor.

Failure  
to act  
deemed  
refusal

(2) Where, within six months after the delivery to the Minister of articles or other document referred to in subsection 1, the Minister has not filed or refused to file such articles or other document, he shall be deemed for the purposes of section 268 to have refused to file it. *New*.

Appeal  
from  
Minister

**268.**—(1) Any person who feels aggrieved by a decision of the Minister to,

- (a) refuse to file articles or any other document or to issue any certificate required by this Act to be filed or issued;
- (b) issue or refuse to issue a certificate of amendment under subsection 2, 3 or 4 of section 8; or
- (c) issue an order under section 250,

may appeal the decision to the Court of Appeal.

Form of  
appeal

(2) Every appeal shall be by notice of motion sent by registered mail to the Minister within thirty days after the mailing of the notice of the decision, and the practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action, provided that the Rules Committee may vary or amend such practice and procedure or may prescribe the practice and procedure that shall be applicable to appeals taken under this Act.

Certificate  
of  
Minister

(3) The Minister shall certify to the Registrar of the Supreme Court,

- (a) the decision of the Minister, together with a statement of the reasons therefor;



(b) the record of any hearing; and

(c) all written submissions to the Minister or other material that is relevant to the appeal. *New.*

(4) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. <sup>Representation</sup>  
1962-63, c. 24, s. 11, *part, amended.*

(5) Where an appeal is taken under this section, the Court <sup>Order of Court of Appeal</sup> of Appeal may by its order direct the Minister to make such decision or to do such other act as the Minister is authorized and empowered to do under this Act and as the court thinks proper, having regard to the material and submissions before it and to this Act, and the Minister shall make such decision or do such act accordingly.

(6) Notwithstanding an order of the Court of Appeal, the Minister has power to make any further decision upon new <sup>Minister may make further decision</sup> material or where there is a material change in the circumstances, and every such decision is subject to this section. *New.*

**269.**—(1) Section 5 of *The Securities Act, 1966* applies, <sup>Hearings of Commission</sup> so far as possible, to hearings of the Commission under this Act. 1966, c. 142

(2) Any person who feels aggrieved by a decision of the Commission under this Act may appeal the decision to the Court of Appeal, and subsections 2 to 6 of section 29 of *The Securities Act, 1966* apply to the appeal. *New.* <sup>Appeal from Commission</sup>

**270.** An appeal lies to the Court of Appeal from any order made by the court under this Act. R.S.O. 1960, c. 71, <sup>Appeal from court</sup> s. 338.

**271.** The Lieutenant Governor in Council may make <sup>Regulations</sup> regulations respecting any matter that he considers necessary relating to the incorporation, conduct and dissolution of corporations including, without limiting the generality of the foregoing, regulations,

- (a) respecting names of corporations or classes thereof, objects of corporations, authorized capital of corporations, the designation, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes of shares of corporations, or any other matter pertaining to articles or the filing thereof;

- (b) requiring the payment of fees for any matter that the Minister is required or authorized to do under this Act, and prescribing the amounts thereof;
- (c) prescribing any matter required by this Act to be prescribed by the regulations;
- (d) designating officers of the Department for the purposes of paragraph 7 of subsection 1 of section 1 and section 266;
- (e) respecting the form and content of the reports of insiders required to be filed under section 148;
- (f) respecting the form and content of information circulars required by section 118. R.S.O. 1960, c. 71, s. 335; 1966, c. 28, ss. 3, 4, *part, amended*.

Continu-  
ance of  
letters  
patent, etc.

**272.**—(1) Any provision in the letters patent, supplementary letters patent or by-laws of a corporation that was valid immediately before this Act comes into force except a by-law that contravenes section 147 continues to be valid and in effect, but any additions or amendments thereto or deletions therefrom shall be made in accordance with this Act.

Continu-  
ance re  
shares not  
fully paid  
R.S.O. 1960,  
c. 71

(2) The provisions of *The Corporations Act* relating to the liability of the holder of shares that are not fully paid and to the enforcement of such liability continue to apply in respect of shares that are not fully paid when this Act comes into force. *New*.

Commence-  
ment

**273.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

**274.** This Act may be cited as *The Business Corporations Act, 1970*.



The Business Corporations Act, 1970

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*1st Reading*

April 29th, 1970

*2nd Reading*

May 5th, 1970

*3rd Reading*

June 25th, 1970

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MR. LAWRENCE (Carleton East)

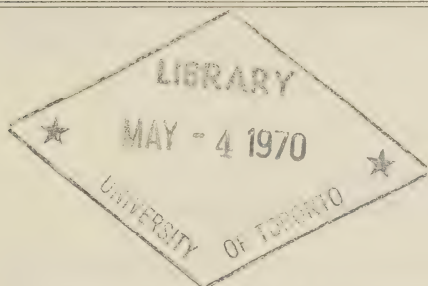
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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to amend The Loggers' Safety Act, 1962-63**

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MR. BRUNELLE

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TORONTO

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EXPLANATORY NOTE

The amendments strengthen and up-date the sections amended.

## An Act to amend The Loggers' Safety Act, 1962-63

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause *b* of section 1 of *The Loggers' Safety Act*, 1962-63, 1962-63, c. 76, s. 1, cl. *b*, re-enacted 1962-63, is repealed and the following substituted therefor:

- (*b*) "logger" means a person who engages in logging and includes an operator and an employee of an operator in the course of his employment on a site on which logging is conducted.

(2) Clause *c* of the said section 1 is amended by inserting after "the" in the second line "measuring", so that the clause shall read as follows: 1962-63, c. 76, s. 1, cl. *c*, amended

- (*c*) "logging" means the operation of felling or trimming trees or the measuring, storing, transporting or floating of logs.

2. Subsection 2 of section 2 of *The Loggers' Safety Act*, 1962-63, 1962-63, c. 76, s. 2, subs. 2, amended 1962-63, is amended by adding at the end thereof "and for his personal use", so that the subsection shall read as follows:

- (2) This Act does not apply to logging being done in person and solely by an individual on his own behalf and for his personal use. Where Act does not apply

3.—(1) Subsection 1 of section 9 of *The Loggers' Safety Act*, 1962-63, 1962-63, c. 76, s. 9, subs. 1, re-enacted 1962-63, as amended by section 4 of *The Loggers' Safety Amendment Act, 1965*, is repealed and the following substituted therefor:

- (1) Where an accident, industrial disease, explosion or fire causes bodily injury to a logger whereby he is prevented or is likely to be prevented from working Notice of accidents

beyond the day of the occurrence, a notice of the occurrence in the prescribed form shall be delivered or mailed to the chief officer by the operator.

1962-63,  
c. 76, s. 9,  
subs. 2,  
re-enacted

(2) Subsection 2 of the said section 9 is repealed and the following substituted therefor:

When notice  
to be sent

(2) Such notice shall be delivered or mailed by the operator within three days after he learns of an occurrence mentioned in subsection 1.

1962-63,  
c. 76, s. 10,  
subs. 1,  
amended

**4.** Subsection 1 of section 10 of *The Loggers' Safety Act, 1962-63* is amended by striking out "critically injured" in the first line and inserting in lieu thereof "hospitalized through injury".

Commence-  
ment

**5.** This Act comes into force on the 1st day of September, 1970.

Short title

**6.** This Act may be cited as *The Loggers' Safety Amendment Act, 1970*.









An Act to amend  
The Loggers' Safety Act, 1962-63

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*1st Reading*

April 17th, 1970

*2nd Reading*

*3rd Reading*

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MR. BRUNELLE

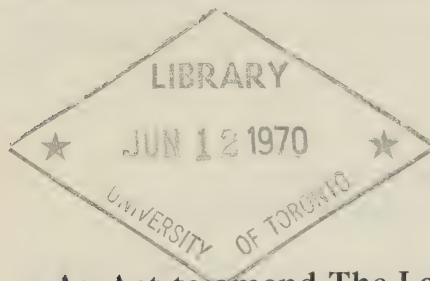
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## BILL 62

6

3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970



**An Act to amend The Loggers' Safety Act, 1962-63**

MR. BRUNELLE

TORONTO

PRINTED AND PUBLISHED BY WILLIAM KINMOND, QUEEN'S PRINTER AND PUBLISHER



BILL 62

1970

## An Act to amend The Loggers' Safety Act, 1962-63

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Clause *b* of section 1 of *The Loggers' Safety Act, 1962-63* is repealed and the following substituted therefor: <sup>1962-63,  
c. 76, s. 1,  
cl. b,  
re-enacted</sup>

(b) “logger” means a person who engages in logging and includes an operator and an employee of an operator in the course of his employment on a site on which logging is conducted.

(2) Clause *c* of the said section 1 is amended by inserting <sup>1962-63,  
c. 76, s. 1,  
cl. c,  
amended</sup> after “the” in the second line “measuring”, so that the clause shall read as follows:

(c) “logging” means the operation of felling or trimming trees or the measuring, storing, transporting or floating of logs.

**2.** Subsection 2 of section 2 of *The Loggers' Safety Act, 1962-63* is amended by adding at the end thereof “and for his <sup>1962-63,  
c. 76, s. 2,  
subs. 2,  
amended</sup> personal use”, so that the subsection shall read as follows:

(2) This Act does not apply to logging being done in <sup>Where Act  
does not  
apply</sup> person and solely by an individual on his own behalf and for his personal use.

**3.**—(1) Subsection 1 of section 9 of *The Loggers' Safety Act, 1962-63*, as amended by section 4 of *The Loggers' Safety Amendment Act, 1965*, is repealed and the following substituted therefor: <sup>1962-63,  
c. 76, s. 9,  
subs. 1,  
re-enacted</sup>

(1) Where an accident, industrial disease, explosion or fire causes bodily injury to a logger whereby he is prevented or is likely to be prevented from working <sup>Notice of  
accidents</sup>

beyond the day of the occurrence, a notice of the occurrence in the prescribed form shall be delivered or mailed to the chief officer by the operator.

1962-63,  
c. 76, s. 9,  
subs. 2,  
re-enacted

(2) Subsection 2 of the said section 9 is repealed and the following substituted therefor:

When notice  
to be sent

(2) Such notice shall be delivered or mailed by the operator within three days after he learns of an occurrence mentioned in subsection 1.

1962-63,  
c. 76, s. 10,  
subs. 1,  
amended

4. Subsection 1 of section 10 of *The Loggers' Safety Act, 1962-63* is amended by striking out "critically injured" in the first line and inserting in lieu thereof "hospitalized through injury".

Commence-  
ment

5. This Act comes into force on the 1st day of September, 1970.

Short title

6. This Act may be cited as *The Loggers' Safety Amendment Act, 1970*.









An Act to amend  
The Loggers' Safety Act, 1962-63

---

*1st Reading*

April 17th, 1970

*2nd Reading*

May 7th, 1970

*3rd Reading*

May 14th, 1970

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MR. BRUNELLE

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

An Act to amend The Forest Fires Prevention Act, 1968

MR. BRUNELLE



TORONTO

PRINTED AND PUBLISHED BY WILLIAM KINMOND, QUEEN'S PRINTER AND PUBLISHER

#### EXPLANATORY NOTE

The amendment permits alternate methods of reduction of the fire hazard from brush and other materials in land clearing operations.

BILL 63

1970

**An Act to amend  
The Forest Fires Prevention Act, 1968**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 16 of *The Forest Fires Prevention Act, 1968* <sup>1968, c. 44, s. 16, amended</sup> is amended by adding thereto the following subsection:

(2) Subsection 1 does not apply to material that has <sup>Exception</sup> been ground, chipped or shredded in an installation approved in the work permit authorizing the clearing of the land.

**2.** This Act comes into force on the day it receives Royal <sup>Commence-</sup> Assent. <sup>ment</sup>

**3.** This Act may be cited as *The Forest Fires Prevention* <sup>Short title</sup> *Amendment Act, 1970*.

An Act to amend  
The Forest Fires Prevention Act, 1968

---

*1st Reading*

April 17th, 1970

*2nd Reading*

*3rd Reading*

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MR. BRUNELLE

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

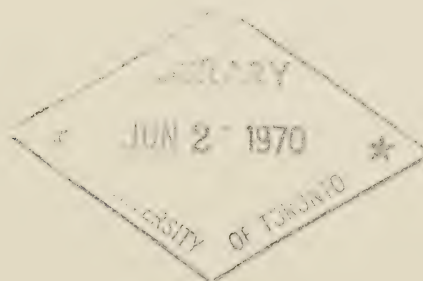
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An Act to amend The Forest Fires Prevention Act, 1968

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MR. BRUNELLE

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BILL 63

1970

**An Act to amend  
The Forest Fires Prevention Act, 1968**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 16 of *The Forest Fires Prevention Act, 1968* <sup>1968, c. 44, s. 16, amended</sup> is amended by adding thereto the following subsection:

(2) Subsection 1 does not apply to material that has <sup>Exception</sup> been ground, chipped or shredded in an installation approved in the work permit authorizing the clearing of the land.

**2.** This Act comes into force on the day it receives Royal <sup>Commence-</sup> Assent. <sup>ment</sup>

**3.** This Act may be cited as *The Forest Fires Prevention* <sup>Short title</sup> *Amendment Act, 1970.*

An Act to amend  
The Forest Fires Prevention Act, 1968

---

*1st Reading*

April 17th, 1970

*2nd Reading*

May 7th, 1970

*3rd Reading*

May 14th, 1970

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MR. BRUNELLE

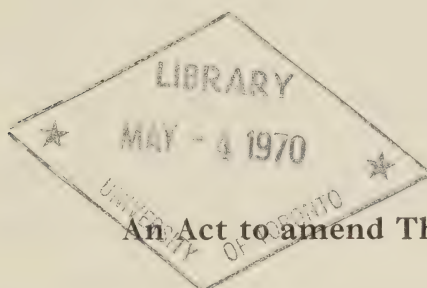
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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to amend The Municipal Act**

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MR. McKEOUGH

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TORONTO

PRINTED AND PUBLISHED BY WILLIAM KINMOND, QUEEN'S PRINTER AND PUBLISHER

#### EXPLANATORY NOTE

The new section empowers a local municipality to levy a tax upon universities that have been designated by the Lieutenant Governor in Council. The maximum amount of the levy is prescribed and the moneys are to be credited by the municipality to its general fund. For the purpose of apportioning county, metropolitan or regional levies, the assessment of a municipality that levies such a tax is deemed to be increased proportionately.

## An Act to amend The Municipal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Municipal Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 249,  
amended

294b.—(1) Notwithstanding any general or special Act, the council of a local municipality may pass by-laws to levy an annual tax upon a university designated by the Lieutenant Governor in Council, not exceeding the sum of \$25 a year for each full-time student enrolled in such university on the 1st day of December in the year preceding the year of levy as determined by the Minister of University Affairs. Universities  
liable to tax

(2) Any tax levied under a by-law passed under sub-section 1 is collectable in the same manner as municipal taxes are collectable and is a special lien on the land under section 532. How tax  
collectable

(3) The tax collected under this section shall be credited by the municipality to the general fund of the municipality. Tax to be  
credited to  
general funds

(4) The assessment of a municipality that levies a tax under this section that is used for apportioning, Municipal  
assessment  
deemed  
increased

(a) a county rate under section 73 of *The Assessment Act, 1968-69*; 1968-69, c. 6

(b) a metropolitan levy under sections 230 and 230b of *The Municipality of Metropolitan Toronto Act*; R.S.O. 1960,  
c. 260

(c) a regional levy under section 108 of *The Regional Municipality of Ottawa-Carleton Act, 1968*; or 1968, c. 115

1968-69,  
c. 106

(d) a regional levy under section 126 of *The Regional Municipality of Niagara Act, 1968-69*,

shall be deemed to be increased by an amount that would have produced the amount of the tax levied under this section by the taxation of real property at the rate applicable to residential and farm property in the preceding year.

Commence-  
ment

**2.** This Act shall be deemed to have come into force on the 1st day of January, 1970.

Short title

**3.** This Act may be cited as *The Municipal Amendment Act, 1970*.









An Act to amend  
The Municipal Act

*1st Reading*

April 20th, 1970

*2nd Reading*

*3rd Reading*

MR. McKEOUGH



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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to amend The Municipal Act**

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MR. McKEOUGH

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*(Reprinted as amended by the Committee of the Whole House)*



#### EXPLANATORY NOTE

The new section empowers a local municipality to levy a tax upon universities that have been designated by the Lieutenant Governor in Council. The maximum amount of the levy is prescribed and the moneys are to be credited by the municipality to its general fund. For the purpose of apportioning county, metropolitan or regional levies, the assessment of a municipality that levies such a tax is deemed to be increased proportionately.

## An Act to amend The Municipal Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Municipal Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 249,  
amended

294b.—(1) Notwithstanding any general or special Act, Universities  
liable to tax the council of a local municipality designated by the Lieutenant Governor in Council may pass by-laws to levy an annual tax upon a university designated by the Lieutenant Governor in Council, not exceeding the sum of \$25 a year for each full-time student enrolled in such university on the 1st day of December in the year preceding the year of levy as determined by the Minister of University Affairs.

(2) Any tax levied under a by-law passed under sub-section 1 is collectable in the same manner as How tax  
collectable municipal taxes are collectable and is a special lien on the land under section 532.

(3) The tax collected under this section shall be credited Tax to be  
credited to  
general funds by the municipality to the general fund of the municipality.

(4) The assessment of a municipality that levies or could Municipal  
assessment  
deemed  
increased have levied a tax under this section that is used for apportioning,

(a) a county rate under section 73 of *The Assessment Act, 1968-69*; 1968-69, c. 6

(b) a metropolitan levy under sections 230 and 230b of *The Municipality of Metropolitan Toronto Act*, except a levy for public or secondary school purposes; R.S.O. 1960,  
c. 260

1968, c. 115

(c) a regional levy under section 108 of *The Regional Municipality of Ottawa-Carleton Act, 1968*; or

1968-69,  
c. 106

(d) a regional levy under section 126 of *The Regional Municipality of Niagara Act, 1968-69*,

shall be deemed to be increased by an amount that would have produced the amount of the tax levied or that could have been levied under this section by the taxation of real property at the rate applicable to residential and farm property in the preceding year for all purposes other than school purposes.

Commence-  
ment

**2.** This Act shall be deemed to have come into force on the 1st day of January, 1970.

Short title

**3.** This Act may be cited as *The Municipal Amendment Act, 1970*.









An Act to amend  
The Municipal Act

*1st Reading*

April 20th, 1970

*2nd Reading*

May 7th, 1970

*3rd Reading*

MR. McKEOUGH

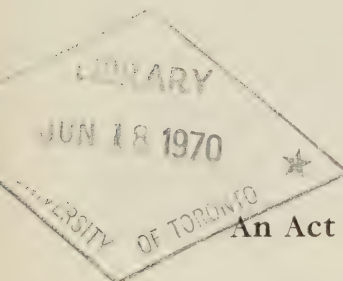
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Committee of the Whole House)



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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to amend The Municipal Act**

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MR. McKEOUGH

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## An Act to amend The Municipal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Municipal Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 249,  
amended

294b.—(1) Notwithstanding any general or special Act, Universities  
liable to tax the council of a local municipality designated by the Lieutenant Governor in Council may pass by-laws to levy an annual tax upon a university designated by the Lieutenant Governor in Council, not exceeding the sum of \$25 a year for each full-time student enrolled in such university on the 1st day of December in the year preceding the year of levy as determined by the Minister of University Affairs.

(2) Any tax levied under a by-law passed under sub-section 1 is collectable in the same manner as municipal taxes are collectable and is a special lien on the land under section 532. How tax  
collectable

(3) The tax collected under this section shall be credited by the municipality to the general fund of the municipality. Tax to be  
credited to  
general funds

(4) The assessment of a municipality that levies or could have levied a tax under this section that is used for apportioning, Municipal  
assessment  
deemed  
increased

(a) a county rate under section 73 of *The Assessment Act, 1968-69*; 1968-69, c. 6

(b) a metropolitan levy under sections 230 and 230b of *The Municipality of Metropolitan Toronto Act*, except a levy for public or secondary school purposes; R.S.O. 1960,  
c. 260

1968, c. 115

(c) a regional levy under section 108 of *The Regional Municipality of Ottawa-Carleton Act, 1968*; or

1968-69,  
c. 106

(d) a regional levy under section 126 of *The Regional Municipality of Niagara Act, 1968-69*,

shall be deemed to be increased by an amount that would have produced the amount of the tax levied or that could have been levied under this section by the taxation of real property at the rate applicable to residential and farm property in the preceding year for all purposes other than school purposes.

Commence-  
ment

**2.** This Act shall be deemed to have come into force on the 1st day of January, 1970.

Short title

**3.** This Act may be cited as *The Municipal Amendment Act, 1970*.









An Act to amend  
The Municipal Act

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*1st Reading*

April 20th, 1970

*2nd Reading*

May 7th, 1970

*3rd Reading*

May 14th, 1970

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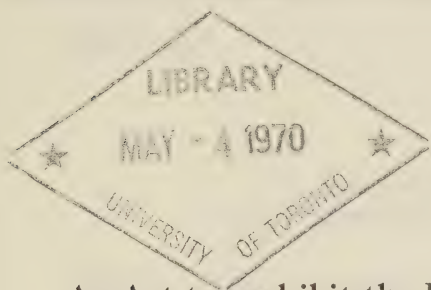
MR. McKEOUGH

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**BILL 65**

3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

**An Act to prohibit the Use of Non-Returnable Bottles**

MR. GAUNT

TORONTO

PRINTED AND PUBLISHED BY WILLIAM KINMOND, QUEEN'S PRINTER AND PUBLISHER

EXPLANATORY NOTE

Self-explanatory.

BILL 65

1970

## An Act to prohibit the Use of Non-Returnable Bottles

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

- (a) “non-returnable bottle” means a breakable container used or designed for use as a container of a fluid beverage that is sold on the condition that it is not redeemable for money or money’s worth on its return when emptied of its contents.

**2.** No person shall manufacture, import into Ontario, sell or offer for sale any fluid beverage that is contained in a non-returnable bottle.

Use of  
non-  
returnable  
bottles  
prohibited

**3.** Every person who contravenes section 2 is guilty of an offence and is liable on summary conviction to a fine of not less than \$25 and not more than \$500.

Offence

**4.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Commence-  
ment

**5.** This Act may be cited as *The Non-Returnable Bottles Act, 1970*.

Short title

An Act to prohibit the  
Use of Non-Returnable Bottles

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*1st Reading*

April 20th, 1970

*2nd Reading*

*3rd Reading*

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MR. GAUNT

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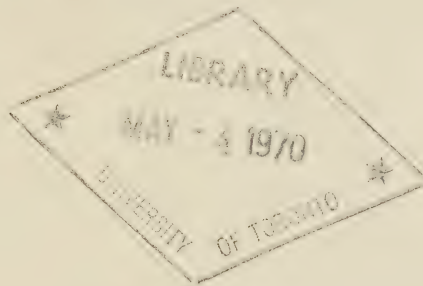


**BILL 66**

3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

**An Act to amend The Workmen's Compensation Act**

MR. JACKSON



TORONTO

PRINTED AND PUBLISHED BY WILLIAM KINMOND, QUEEN'S PRINTER AND PUBLISHER

#### EXPLANATORY NOTE

The amendment provides that a total disability allowance paid to a workman will not be reduced where his disability becomes partial until suitable employment is reasonably available.

BILL 66

1970

## An Act to amend The Workmen's Compensation Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 41 of *The Workmen's Compensation Act*, as amended by section 5 of *The Workmen's Compensation Amendment Act, 1962-63*, is further amended by adding thereto the following subsection:

R.S.O. 1960,  
c. 437, s. 41,  
amended

- (2) Where a workman is in receipt of an allowance in respect of a temporary total disability that becomes a temporary partial disability, the reduced compensation referred to in subsection 1 shall commence from the time employment in a suitable employment or business becomes reasonably available.

Idem

**2.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**3.** This Act may be cited as *The Workmen's Compensation Amendment Act, 1970*.

Short title

An Act to amend  
The Workmen's Compensation Act

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*1st Reading*

April 20th, 1970

*2nd Reading*

*3rd Reading*

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MR. JACKSON

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

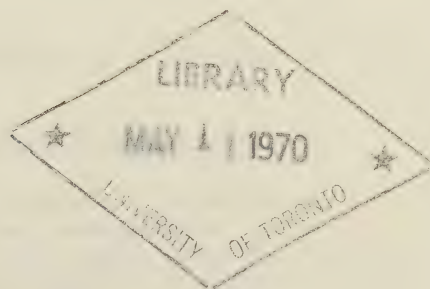
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**The Regional Municipal Grants Act, 1970**

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MR. McKEOUGH

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#### EXPLANATORY NOTES

The Bill provides for a new system of calculating and paying grants to The Municipality of Metropolitan Toronto and the Regional Municipalities of Niagara and Ottawa-Carleton; grants will no longer be paid to those municipalities under section 7 of *The Municipal Unconditional Grants Act*.

The method by which the constituent area municipalities are to levy their yearly rates is set out.

SECTION 1. Self-explanatory.

## The Regional Municipal Grants Act, 1970

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### INTERPRETATION

#### 1. In this Act,

Interpre-  
tation

- (a) "acres in the area municipality" means the area in acres of the municipality, excluding land covered by water, as certified by the Assessment Commissioner or Assessor;
- (b) "area municipality" means an area municipality as defined by *The Regional Municipality of Niagara Act, 1968-69*, <sup>1968-69, c. 106</sup> *The Regional Municipality of Ottawa-Carleton Act, 1968* <sup>1968 c. 115</sup> and *The Municipality of Metropolitan Toronto Act*; <sup>R.S.O. 1960, c. 260</sup>
- (c) "density" means the total number of residential properties in an area municipality divided by the acres in the area municipality correct to two places of decimals;
- (d) "Department" means the Department of Municipal Affairs;
- (e) "Minister" means the Minister of Municipal Affairs;
- (f) "population of a regional municipality" means the aggregate of the populations, determined or re-determined in accordance with section 4, of the area municipalities within such regional municipality;
- (g) "regional municipality" means The Regional Municipality of Niagara, The Regional Municipality of Ottawa-Carleton and The Municipality of Metropolitan Toronto;

1968-69, c. 6

- (h) "residential property" means land separately assessed under paragraph 2 of subsection 2 of section 17 of *The Assessment Act, 1968-69* upon which there is a building used or intended to be used as a residence.

## PART I

## CALCULATION OF THE GRANT

Per capita grants

**2.** In each year there shall be paid out of the moneys appropriated therefor by the Legislature to each regional municipality a per capita payment or payments in accordance with the population of the area municipalities within the regional municipality under this Act as follows:

1. \$7.00 per capita.
2. 50 cents per capita to represent a share of fines, except those levied under municipal by-laws.
3. An amount per capita in accordance with the Schedule based on the density of each area municipality.
4. \$1.50 per capita for the year 1971 and each subsequent year where a regional municipality is deemed to be a city for the purpose of *The Police Act*.

R.S.O. 1960,  
c. 298Credit to  
area municipalities

**3.** In each year the regional municipality shall credit each area municipality with an amount calculated by multiplying the population of the area municipality as determined under section 4 by the sum of,

- (a) \$7.50;
- (b) the amount as determined under paragraph 3 of section 2; and
- (c) \$1.50 where a regional municipality is deemed to be a city for the purposes of *The Police Act*, except that no amount shall be included under this clause for the year 1970.

Determination of  
population  
R.S.O. 1960,  
c. 259

**4.—(1)** The population of the area municipalities for the purposes of this Act shall be determined in accordance with *The Municipal Unconditional Grants Act*.

Idem

(2) Notwithstanding subsection 1, for the purposes of the payments in the years 1970 and 1971 the population of each area municipality within The Regional Municipality of



SECTION 2. A grant is payable to each regional municipality in the manner specified.

SECTION 3. The regional municipalities are required to credit their constituent area municipalities with a proportion of the grant in the manner specified.

SECTION 4. The procedure by which the population of the municipalities is determined for the purpose of computing the per capita grant is set out.

SECTION 5. Self-explanatory.

SECTION 6. Definitions are provided.

Ottawa-Carleton and The Municipality of Metropolitan Toronto shall be determined by the Department and shall equal in total the populations as determined for the purposes of the payment in 1969 under section 7 of *The Municipal Unconditional Grants Act* to such municipalities. R.S.O. 1960, c. 259

(3) Notwithstanding subsection 1, for the purposes of the <sup>Idem</sup> payments in the years 1970 and 1971, the population of each area municipality in The Regional Municipality of Niagara shall be determined in such manner as the Department considers proper.

(4) Notwithstanding subsections 2 and 3, the Department <sup>Redeter-</sup> may redetermine the population of the area municipalities <sup>mination of</sup> within a regional municipality whenever in its opinion the population of the regional municipality has increased by 7 per cent of the population of the regional municipality as determined for the purposes of the payments in 1970 under this Act.

**5.—**(1) No payments shall be made to a regional municipality or to an area municipality under section 7 of *The Municipal Unconditional Grants Act*. <sup>No payments under</sup> R.S.O. 1960, c. 259, s. 7

(2) Notwithstanding section 2, the moneys required for the <sup>Moneys</sup> purposes of this Act in the year 1970 shall be paid out of the Consolidated Revenue Fund.

## PART II

### LEVIES

#### **6. In this Part,**

Interpre-  
tation

(a) “commercial assessment” means the total of,

(i) the assessment for real property that is used as a basis for computing business assessment including the assessment for real property that is rented and is occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal, metropolitan or regional corporation or local board thereof,

(ii) the business assessment, and

(iii) the assessment for mineral lands, railway lands, other than railway lands actually in

use for residential and farming purposes, and pipelines and the assessment of telephone and telegraph companies,

according to the last revised assessment roll;

(b) "net regional levy" means the amount required for metropolitan and regional purposes including the sums required by law to be provided for any board, commission or other body but excluding school purposes, apportioned to each area municipality by,

R.S.O. 1960,  
c. 260

(i) the Metropolitan Council under sections 230 and 230b of *The Municipality of Metropolitan Toronto Act*,

1968, c. 115

(ii) the Regional Council under section 108 of *The Regional Municipality of Ottawa-Carleton Act, 1968*, or

1968-69,  
c. 106

(iii) the Regional Council under section 126 of *The Regional Municipality of Niagara Act, 1968-69*,

reduced by the amount credited to each area municipality under section 3;

(c) "residential and farm assessment" means the total assessment for real property according to the last revised assessment roll except the assessments for real property mentioned in subclauses i and iii of clause a.

Levy by  
area municipality

R.S.O. 1960,  
c. 249

**7.—**(1) The council of each area municipality shall levy, in the manner provided by this section, the sums adopted for all purposes, excluding school purposes, in accordance with section 297 of *The Municipal Act*, together with a sum equal to the sums required by law to be provided by the council to meet the net regional levy.

Determin-  
ation of  
rates

(2) Notwithstanding section 294 of *The Municipal Act*, the rates to be levied in each year in an area municipality shall be determined in the following manner:

1. Add 85 per cent of the residential and farm assessment to the commercial assessment.
2. Multiply the aggregate of the net regional levy and the sums adopted in accordance with section 297 of *The Municipal Act* for all purposes excluding school purposes by 1000 and divide the product by the total determined under paragraph 1.



SECTION 7—Subsection 1. Provision is made for the yearly levy by the area municipalities.

Subsection 2. The manner in which the yearly rates are to be levied by each area municipality is specified; the residential and farm mill rate for all purposes except school purposes is established at 85 per cent of the commercial mill rate.

SECTION 8. This section is applicable only to The Regional Municipality of Niagara and provides that the amounts required by an area municipality for regional and general purposes shall be apportioned on the basis of the provincially equalized assessment, to each part of that area municipality that in 1969 formed part or all of a former municipality.

SECTION 9. A reference is changed.

3. The rate to be levied on commercial assessment shall be the rate determined under paragraph 2.
4. The rate to be levied on residential and farm assessment shall be 85 per cent of the rate determined under paragraph 2.

**8.—(1)** In this section,

Interpre-  
tation

- (a) “area municipality” means area municipality as defined in clause *a* of section 1 of *The Regional Municipality of Niagara Act, 1968-69*; <sup>1968-69, c. 106</sup>
- (b) “merged area” means merged area as defined in clause *j* of section 1 of *The Regional Municipality of Niagara Act, 1968-69*;
- (c) “rateable property” means rateable property as defined in section 123 of *The Regional Municipality of Niagara Act, 1968-69*.

(2) Notwithstanding section 7, the net regional levy and the sums adopted in accordance with section 297 of *The Municipal Act* for all purposes excluding school purposes levied against the whole rateable property of an area municipality shall be apportioned among the merged areas of such area municipality in the proportion that the total equalized assessment of each merged area bears to the total equalized assessment of the area municipality both according to the last revised assessment roll as equalized by the Department in accordance with subsection 4 of section 128 of *The Regional Municipality of Niagara Act, 1968-69*. <sup>Apportionment among merged areas R.S.O. 1960, c. 249</sup>

(3) The rates to be levied in each merged area shall be determined in accordance with paragraphs 1 to 4 of subsection 2 of section 7. <sup>Determination of rates</sup>

**9.** In subsection 6 of section 129 of *The Regional Municipality of Niagara Act, 1968-69* the reference to section 128 shall be deemed to be a reference to section 7 of this Act. <sup>Reference to 1968-69, c. 106, s. 128</sup>

**10.** The following are repealed:

Repeals

1. Section 231 of *The Municipality of Metropolitan Toronto Act*, as amended by section 9 of *The Municipality of Metropolitan Toronto Amendment Act, 1967*. <sup>R.S.O. 1960, c. 260, s. 231</sup>
2. Section 110 of *The Regional Municipality of Ottawa-Carleton Act, 1968*. <sup>1968, c. 115, s. 110</sup>

1968-69, c.  
106, s. 127,  
s. 128, subss.  
1-3, 6-10,  
Schedule

3. Section 127 and subsections 1, 2, 3, 6, 7, 8, 9 and 10 of section 128 and the Schedule thereto of *The Regional Municipality of Niagara Act, 1968-69*.

Commence-  
ment

- 11.** This Act shall be deemed to have come into force on the 1st day of January, 1970.

Short title

- 12.** This Act may be cited as *The Regional Municipal Grants Act, 1970*.



## SCHEDULE

DENSITY	AMOUNT PER CAPITA
0.15 and under	\$5.00
Over 0.15 to 0.30	4.00
Over 0.30 to 0.45	3.00
Over 0.45 to 0.60	2.00
Over 0.60 to 0.75	1.00
Over 0.75	Nil





The Regional Municipal Grants  
Act, 1970

---

*1st Reading*

April 21st, 1970

*2nd Reading*

*3rd Reading*

---

MR. McKEOUGH

---



ON

6

BILL 67

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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The Regional Municipal Grants Act, 1970

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MR. McKEOUGH

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*(Reprinted as amended by the Committee of the Whole House)*



#### EXPLANATORY NOTES

The Bill provides for a new system of calculating and paying grants to The Municipality of Metropolitan Toronto and the Regional Municipalities of Niagara and Ottawa-Carleton; grants will no longer be paid to those municipalities under section 7 of *The Municipal Unconditional Grants Act*.

The method by which the constituent area municipalities are to levy their yearly rates is set out.

SECTION 1. Self-explanatory.

## BILL 67

1970

## The Regional Municipal Grants Act, 1970

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## INTERPRETATION

## 1. In this Act,

Interpre-  
tation

- (a) "acres in the area municipality" means the area in acres of the municipality, excluding land covered by water, as certified by the Assessment Commissioner or Assessor;
- (b) "area municipality" means an area municipality as defined by *The Regional Municipality of Niagara Act, 1968-69*, *The Regional Municipality of Ottawa-Carleton Act, 1968* and *The Municipality of Metropolitan Toronto Act*; <sup>1968-69, c. 106</sup> <sup>1968 c. 115</sup> <sup>R.S.O. 1960, c. 260</sup>
- (c) "density" means the total number of residential properties in an area municipality divided by the acres in the area municipality correct to two places of decimals;
- (d) "Department" means the Department of Municipal Affairs;
- (e) "Minister" means the Minister of Municipal Affairs;
- (f) "population of a regional municipality" means the aggregate of the populations, determined or re-determined in accordance with section 4, of the area municipalities within such regional municipality;
- (g) "regional municipality" means The Regional Municipality of Niagara, The Regional Municipality of Ottawa-Carleton and The Municipality of Metropolitan Toronto;

1968-69, c. 6

- (h) "residential property" means land separately assessed under paragraph 2 of subsection 2 of section 17 of *The Assessment Act, 1968-69* upon which there is a building used or intended to be used as a residence.

## PART I

## CALCULATION OF THE GRANT

Per capita  
grants

**2.** In each year there shall be paid out of the moneys appropriated therefor by the Legislature to each regional municipality a per capita payment or payments in accordance with the population of the area municipalities within the regional municipality under this Act as follows:

1. \$7.00 per capita.
2. 50 cents per capita to represent a share of fines, except those levied under municipal by-laws.
3. An amount per capita in accordance with the Schedule based on the density of each area municipality.
4. \$1.50 per capita for the year 1971 and each subsequent year where a regional municipality is deemed to be a city for the purpose of *The Police Act*.

R.S.O. 1960,  
c. 298Credit to  
area municipalities

**3.—(1)** In each year the regional municipality shall credit each area municipality with an amount calculated by multiplying the population of the area municipality as determined under section 4 by the sum of,

- (a) \$7.50;
- (b) the amount as determined under paragraph 3 of section 2; and
- (c) \$1.50 where a regional municipality is deemed to be a city for the purposes of *The Police Act*, except that no amount shall be included under this clause for the year 1970.

Idem

**(2)** Notwithstanding subsection 1, where in the opinion of the Department the population of an area municipality as determined under section 4 has increased by an amount equal to 7 per cent of the population as so determined, the Department shall redetermine the population of that area municipality for the purposes of this section, and the amount to be credited to each area municipality, other than the amount



SECTION 2. A grant is payable to each regional municipality in the manner specified.

SECTION 3. The regional municipalities are required to credit their constituent area municipalities with a proportion of the grant in the manner specified.

SECTION 4. The procedure by which the population of the municipalities is determined for the purpose of computing the per capita grant is set out.

SECTION 5. Self-explanatory.

SECTION 6. Definitions are provided.

determined under paragraph 3 of section 2, shall be an amount that bears the same proportion to the total amount paid to the regional municipality under paragraphs 1, 2 and 4 of section 2 as the population of the area municipality as so determined or redetermined bears to the total of the populations of the area municipalities as so determined or redetermined.

**4.—(1)** The population of the area municipalities for the purposes of this Act shall be determined in accordance with *The Municipal Unconditional Grants Act*. Determination of population  
R.S.O. 1960,  
c. 259

(2) Notwithstanding subsection 1, for the purposes of the payments in the years 1970 and 1971 the population of each area municipality within The Regional Municipality of Ottawa-Carleton and The Municipality of Metropolitan Toronto shall be determined by the Department and shall equal in total the populations as determined for the purposes of the payment in 1969 under section 7 of *The Municipal Unconditional Grants Act* to such municipalities. Idem  
R.S.O. 1960,  
c. 259

(3) Notwithstanding subsection 1, for the purposes of the payments in the years 1970 and 1971, the population of each area municipality in The Regional Municipality of Niagara shall be determined in such manner as the Department considers proper. Idem

(4) Notwithstanding subsections 2 and 3, the Department may redetermine the population of the area municipalities within a regional municipality whenever in its opinion the population of the regional municipality has increased by 7 per cent of the population of the regional municipality as determined for the purposes of the payments in 1970 under this Act. Redetermination of population  
R.S.O. 1960,  
c. 259, s. 7

**5.—(1)** No payments shall be made to a regional municipality or to an area municipality under section 7 of *The Municipal Unconditional Grants Act*. No payments under  
R.S.O. 1960,  
c. 259, s. 7

(2) Notwithstanding section 2, the moneys required for the purposes of this Act in the year 1970 shall be paid out of the Consolidated Revenue Fund. Moneys

## PART II

### LEVIES

#### **6.** In this Part,

Interpretation

(a) "commercial assessment" means the total of,

- (i) the assessment for real property that is used as a basis for computing business assessment

including the assessment for real property that is rented and is occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal, metropolitan or regional corporation or local board thereof,

(ii) the business assessment, and

(iii) the assessment for mineral lands, railway lands, other than railway lands actually in use for residential and farming purposes, and pipelines and the assessment of telephone and telegraph companies,

according to the last revised assessment roll;

(b) "net regional levy" means the amount required for metropolitan and regional purposes including the sums required by law to be provided for any board, commission or other body but excluding school purposes, apportioned to each area municipality by,

R.S.O. 1960,  
c. 260

(i) the Metropolitan Council under sections 230 and 230b of *The Municipality of Metropolitan Toronto Act*,

1968, c. 115

(ii) the Regional Council under section 108 of *The Regional Municipality of Ottawa-Carleton Act, 1968*, or

1968-69,  
c. 106

(iii) the Regional Council under section 126 of *The Regional Municipality of Niagara Act, 1968-69*,

reduced by the amount credited to each area municipality under section 3;

(c) "residential and farm assessment" means the total assessment for real property according to the last revised assessment roll except the assessments for real property mentioned in subclauses i and iii of clause a.

Levy by  
area municipality

R.S.O. 1960,  
c. 249

7.—(1) The council of each area municipality shall levy, in the manner provided by this section, the sums adopted for all purposes, excluding school purposes, in accordance with section 297 of *The Municipal Act*, together with a sum equal to the sums required by law to be provided by the council to meet the net regional levy.



SECTION 7—Subsection 1. Provision is made for the yearly levy by the area municipalities.

Subsection 2. The manner in which the yearly rates are to be levied by each area municipality is specified; the residential and farm mill rate for all purposes except school purposes is established at 85 per cent of the commercial mill rate.

SECTION 8. This section is applicable only to The Regional Municipality of Niagara and provides that the amounts required by an area municipality for regional and general purposes shall be apportioned on the basis of the provincially equalized assessment, to each part of that area municipality that in 1969 formed part or all of a former municipality.

(2) Notwithstanding section 294 of *The Municipal Act*,<sup>Determin-  
ation of  
rates</sup> the rates to be levied in each year in an area municipality shall be determined in the following manner:

1. Add 85 per cent of the residential and farm assessment to the commercial assessment.
2. Multiply the aggregate of the net regional levy and the sums adopted in accordance with section 297 of *The Municipal Act* for all purposes excluding school purposes by 1000 and divide the product by the total determined under paragraph 1.
3. The rate to be levied on commercial assessment shall be the rate determined under paragraph 2.
4. The rate to be levied on residential and farm assessment shall be 85 per cent of the rate determined under paragraph 2.

8.—(1) In this section,

Interpre-  
tation

- (a) "area municipality" means area municipality as defined in clause *a* of section 1 of *The Regional Municipality of Niagara Act, 1968-69*; <sup>1968-69,  
c. 106</sup>
- (b) "merged area" means merged area as defined in clause *j* of section 1 of *The Regional Municipality of Niagara Act, 1968-69*;
- (c) "rateable property" means rateable property as defined in section 123 of *The Regional Municipality of Niagara Act, 1968-69*.

(2) Notwithstanding section 7, the net regional levy and the sums adopted in accordance with section 297 of *The Municipal Act* for all purposes excluding school purposes levied against the whole rateable property of an area municipality shall be apportioned among the merged areas of such area municipality in the proportion that the total equalized assessment of each merged area bears to the total equalized assessment of the area municipality both according to the last revised assessment roll as equalized by the Department in accordance with subsection 4 of section 128 of *The Regional Municipality of Niagara Act, 1968-69*. <sup>Apportion-  
ment among  
merged  
areas  
R.S.O. 1960,  
c. 249</sup>

(3) The rates to be levied in each merged area shall be determined in accordance with paragraphs 1 to 4 of subsection 2 of section 7. <sup>Determin-  
ation of  
rates</sup>

Reference  
to 1968-69,  
c. 106,  
s. 128

**9.** In subsection 6 of section 129 of *The Regional Municipality of Niagara Act, 1968-69* the reference to section 128 shall be deemed to be a reference to section 7 of this Act.

Repeals

**10.** The following are repealed:

R.S.O. 1960,  
c. 260, s. 231

1. Section 231 of *The Municipality of Metropolitan Toronto Act*, as amended by section 9 of *The Municipality of Metropolitan Toronto Amendment Act, 1967*.

1968, c. 115,  
s. 110

2. Section 110 of *The Regional Municipality of Ottawa-Carleton Act, 1968*.

1968-69, c.  
106, s. 127,  
s. 128, subss.  
1-3, 6-10,  
Schedule

3. Section 127 and subsections 1, 2, 3, 6, 7, 8, 9 and 10 of section 128 and the Schedule thereto of *The Regional Municipality of Niagara Act, 1968-69*.

Commence-  
ment

**11.** This Act shall be deemed to have come into force on the 1st day of January, 1970.

Short title

**12.** This Act may be cited as *The Regional Municipal Grants Act, 1970*.



SECTION 9. A reference is changed.



## SCHEDULE

DENSITY	AMOUNT PER CAPITA
0.15 and under	\$5.00
Over 0.15 to 0.30	4.00
Over 0.30 to 0.45	3.00
Over 0.45 to 0.60	2.00
Over 0.60 to 0.75	1.00
Over 0.75	Nil

The Regional Municipal Grants  
Act, 1970

---

*1st Reading*

April 21st, 1970

*2nd Reading*

May 7th, 1970

*3rd Reading*

---

MR. McKEOUGH

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(Reprinted as amended by the  
Committee of the Whole House)



**BILL 67**

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**The Regional Municipal Grants Act, 1970**

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MR. McKEOUGH

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BILL 67

1970

## The Regional Municipal Grants Act, 1970

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### INTERPRETATION

#### 1. In this Act,

Interpre-  
tation

- (a) "acres in the area municipality" means the area in acres of the municipality, excluding land covered by water, as certified by the Assessment Commissioner or Assessor;
- (b) "area municipality" means an area municipality as defined by *The Regional Municipality of Niagara Act, 1968-69*, *The Regional Municipality of Ottawa-Carleton Act, 1968* and *The Municipality of Metropolitan Toronto Act*; 1968-69,  
c. 106  
1968 c. 115  
R.S.O. 1960,  
c. 260
- (c) "density" means the total number of residential properties in an area municipality divided by the acres in the area municipality correct to two places of decimals;
- (d) "Department" means the Department of Municipal Affairs;
- (e) "Minister" means the Minister of Municipal Affairs;
- (f) "population of a regional municipality" means the aggregate of the populations, determined or re-determined in accordance with section 4, of the area municipalities within such regional municipality;
- (g) "regional municipality" means The Regional Municipality of Niagara, The Regional Municipality of Ottawa-Carleton and The Municipality of Metropolitan Toronto;

1968-69, c. 6

- (h) "residential property" means land separately assessed under paragraph 2 of subsection 2 of section 17 of *The Assessment Act, 1968-69* upon which there is a building used or intended to be used as a residence.

## PART I

### CALCULATION OF THE GRANT

Per capita  
grants

**2.** In each year there shall be paid out of the moneys appropriated therefor by the Legislature to each regional municipality a per capita payment or payments in accordance with the population of the area municipalities within the regional municipality under this Act as follows:

1. \$7.00 per capita.
2. 50 cents per capita to represent a share of fines, except those levied under municipal by-laws.
3. An amount per capita in accordance with the Schedule based on the density of each area municipality.
4. \$1.50 per capita for the year 1971 and each subsequent year where a regional municipality is deemed to be a city for the purpose of *The Police Act*.

R.S.O. 1960,  
c. 298

Credit to  
area municipalities

**3.—(1)** In each year the regional municipality shall credit each area municipality with an amount calculated by multiplying the population of the area municipality as determined under section 4 by the sum of,

- (a) \$7.50;
- (b) the amount as determined under paragraph 3 of section 2; and
- (c) \$1.50 where a regional municipality is deemed to be a city for the purposes of *The Police Act*, except that no amount shall be included under this clause for the year 1970.

Idem

(2) Notwithstanding subsection 1, where in the opinion of the Department the population of an area municipality as determined under section 4 has increased by an amount equal to 7 per cent of the population as so determined, the Department shall redetermine the population of that area municipality for the purposes of this section, and the amount to be credited to each area municipality, other than the amount



determined under paragraph 3 of section 2, shall be an amount that bears the same proportion to the total amount paid to the regional municipality under paragraphs 1, 2 and 4 of section 2 as the population of the area municipality as so determined or redetermined bears to the total of the populations of the area municipalities as so determined or redetermined.

4.—(1) The population of the area municipalities for the purposes of this Act shall be determined in accordance with *The Municipal Unconditional Grants Act*. Determination of population  
R.S.O. 1960,  
c. 259

(2) Notwithstanding subsection 1, for the purposes of the payments in the years 1970 and 1971 the population of each area municipality within The Regional Municipality of Ottawa-Carleton and The Municipality of Metropolitan Toronto shall be determined by the Department and shall equal in total the populations as determined for the purposes of the payment in 1969 under section 7 of *The Municipal Unconditional Grants Act* to such municipalities. Idem  
R.S.O. 1960,  
c. 259

(3) Notwithstanding subsection 1, for the purposes of the payments in the years 1970 and 1971, the population of each area municipality in The Regional Municipality of Niagara shall be determined in such manner as the Department considers proper. Idem

(4) Notwithstanding subsections 2 and 3, the Department may redetermine the population of the area municipalities within a regional municipality whenever in its opinion the population of the regional municipality has increased by 7 per cent of the population of the regional municipality as determined for the purposes of the payments in 1970 under this Act. Redetermination of population

5.—(1) No payments shall be made to a regional municipality or to an area municipality under section 7 of *The Municipal Unconditional Grants Act*. No payments under  
R.S.O. 1960,  
c. 259, s. 7

(2) Notwithstanding section 2, the moneys required for the purposes of this Act in the year 1970 shall be paid out of the Consolidated Revenue Fund. Moneys

## PART II

### LEVIES

#### 6. In this Part,

Interpretation

(a) "commercial assessment" means the total of,

- (i) the assessment for real property that is used as a basis for computing business assessment

including the assessment for real property that is rented and is occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal, metropolitan or regional corporation or local board thereof,

(ii) the business assessment, and

(iii) the assessment for mineral lands, railway lands, other than railway lands actually in use for residential and farming purposes, and pipelines and the assessment of telephone and telegraph companies,

according to the last revised assessment roll;

(b) "net regional levy" means the amount required for metropolitan and regional purposes including the sums required by law to be provided for any board, commission or other body but excluding school purposes, apportioned to each area municipality by,

R.S.O. 1960,  
c. 260

(i) the Metropolitan Council under sections 230 and 230b of *The Municipality of Metropolitan Toronto Act*,

1968, c. 115

(ii) the Regional Council under section 108 of *The Regional Municipality of Ottawa-Carleton Act, 1968*, or

1968-69,  
c. 106

(iii) the Regional Council under section 126 of *The Regional Municipality of Niagara Act, 1968-69*,

reduced by the amount credited to each area municipality under section 3;

(c) "residential and farm assessment" means the total assessment for real property according to the last revised assessment roll except the assessments for real property mentioned in subclauses i and iii of clause a.

Levy by  
area muni-  
cipality

7.—(1) The council of each area municipality shall levy, in the manner provided by this section, the sums adopted for all purposes, excluding school purposes, in accordance with section 297 of *The Municipal Act*, together with a sum equal to the sums required by law to be provided by the council to meet the net regional levy.

R.S.O. 1960,  
c. 249

(2) Notwithstanding section 294 of *The Municipal Act*,<sup>Determin-  
ation of  
rates</sup> the rates to be levied in each year in an area municipality shall be determined in the following manner:

1. Add 85 per cent of the residential and farm assessment to the commercial assessment.
2. Multiply the aggregate of the net regional levy and the sums adopted in accordance with section 297 of *The Municipal Act* for all purposes excluding school purposes by 1000 and divide the product by the total determined under paragraph 1.
3. The rate to be levied on commercial assessment shall be the rate determined under paragraph 2.
4. The rate to be levied on residential and farm assessment shall be 85 per cent of the rate determined under paragraph 2.

8.—(1) In this section,

Interpre-  
tation

- (a) "area municipality" means area municipality as defined in clause *a* of section 1 of *The Regional Municipality of Niagara Act, 1968-69*,<sup>1968-69,  
c. 106</sup>
- (b) "merged area" means merged area as defined in clause *j* of section 1 of *The Regional Municipality of Niagara Act, 1968-69*;
- (c) "rateable property" means rateable property as defined in section 123 of *The Regional Municipality of Niagara Act, 1968-69*.

(2) Notwithstanding section 7, the net regional levy and the sums adopted in accordance with section 297 of *The Municipal Act* for all purposes excluding school purposes levied against the whole rateable property of an area municipality shall be apportioned among the merged areas of such area municipality in the proportion that the total equalized assessment of each merged area bears to the total equalized assessment of the area municipality both according to the last revised assessment roll as equalized by the Department in accordance with subsection 4 of section 128 of *The Regional Municipality of Niagara Act, 1968-69*.<sup>Apportion-  
ment among  
merged  
areas  
R.S.O. 1960,  
c. 249</sup>

(3) The rates to be levied in each merged area shall be determined in accordance with paragraphs 1 to 4 of subsection 2 of section 7.<sup>Determin-  
ation of  
rates</sup>

Reference  
to 1968-69,  
c. 106,  
s. 128

**9.** In subsection 6 of section 129 of *The Regional Municipality of Niagara Act, 1968-69* the reference to section 128 shall be deemed to be a reference to section 7 of this Act.

Repeals

**10.** The following are repealed:

R.S.O. 1960,  
c. 260, s. 231

1. Section 231 of *The Municipality of Metropolitan Toronto Act*, as amended by section 9 of *The Municipality of Metropolitan Toronto Amendment Act, 1967*.

1968, c. 115,  
s. 110

2. Section 110 of *The Regional Municipality of Ottawa-Carleton Act, 1968*.

1968-69, c.  
106, s. 127,  
s. 128, subss.  
1-3, 6-10,  
Schedule

3. Section 127 and subsections 1, 2, 3, 6, 7, 8, 9 and 10 of section 128 and the Schedule thereto of *The Regional Municipality of Niagara Act, 1968-69*.

Commence-  
ment

**11.** This Act shall be deemed to have come into force on the 1st day of January, 1970.

Short title

**12.** This Act may be cited as *The Regional Municipal Grants Act, 1970*.



## SCHEDULE

DENSITY	AMOUNT PER CAPITA
0.15 and under	\$5.00
Over 0.15 to 0.30	4.00
Over 0.30 to 0.45	3.00
Over 0.45 to 0.60	2.00
Over 0.60 to 0.75	1.00
Over 0.75	Nil





The Regional Municipal Grants  
Act, 1970

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*1st Reading*

April 21st, 1970

*2nd Reading*

May 7th, 1970

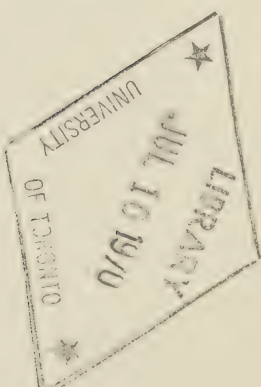
*3rd Reading*

May 14th, 1970

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MR. McKEOUGH

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**BILL 68**

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

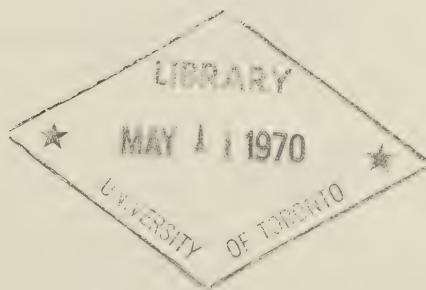
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**An Act to amend The Warble Fly Control Act**

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MR. STEWART

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TORONTO

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#### EXPLANATORY NOTES

SECTION 1—Subsection 1. Self-explanatory.

Subsection 2. The definition of "municipality" is enlarged to include a city, town and village.

Subsection 3. The definition of "treated for warble fly" is amended to permit methods of treatment other than the brush method or spray method.

SECTION 2. The purchase of ingredients by a council will no longer be mandatory.

BILL 68

1970

## An Act to amend The Warble Fly Control Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause *d* of section 1 of *The Warble Fly Control Act* <sup>R.S.O. 1960, c. 422, s. 1, cl. *d*, amended</sup> is amended by adding at the end thereof “and Food”, so that the clause shall read as follows:

(*d*) “Minister” means the Minister of Agriculture and Food.

(2) Clause *e* of the said section 1 is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 422, s. 1, cl. *e*, re-enacted</sup>

(*e*) “municipality” means a city, town, village or township.

(3) Clause *g* of the said section 1 is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 422, s. 1, cl. *g*, re-enacted</sup>

(*g*) “treated for warble fly” means treated by a method prescribed in the regulations.

2. Subsection 1 of section 3 of *The Warble Fly Control Act* <sup>R.S.O. 1960, c. 422, s. 3, subs. 1, amended</sup> is amended by striking out “shall” in the fifth line and inserting in lieu thereof “may”, so that the subsection shall read as follows:

(1) Where the council of a municipality has passed a by-law under this Act, the council shall appoint before the 1st day of April in each year one or more inspectors to enforce the by-law, and for the treatment of cattle for warble fly, may purchase in such amounts as may be required such ingredients as may be designated by the regulations, and may purchase or otherwise acquire such equipment as it deems necessary. <sup>Appointment of inspectors; purchase of supplies</sup>

R.S.O. 1960,  
c. 422, s. 4,  
subs. 2,  
amended

**3.**—(1) Subsection 2 of section 4 of *The Warble Fly Control Act* is amended by striking out “on or after the 18th day of April in any year” in the first and second lines and inserting in lieu thereof “during such periods in any year as may be prescribed in the regulations”, so that the subsection shall read as follows:

Power of  
inspectors to  
treat for  
warble fly

(2) Where an inspector during such periods in any year as may be prescribed in the regulations finds upon inspection that a cattle owner has not treated his cattle for warble fly, or that treatment for warble fly by a cattle owner has not been effective in destroying warble fly grubs, the inspector may treat the cattle or cause the cattle to be treated for warble fly.

R.S.O. 1960,  
c. 422, s. 4,  
subs. 3,  
re-enacted

(2) Subsection 3 of the said section 4 is repealed and the following substituted therefor:

Cost of  
treatment  
for warble  
fly

(3) Where an inspector treats cattle or causes cattle to be treated for warble fly, the cattle owner is liable for the cost of the treatment, and such cost is payable on demand and is recoverable in any court of competent jurisdiction.

R.S.O. 1960,  
c. 422, s. 7,  
cl. a,  
re-enacted

**4.**—(1) Clause *a* of section 7 of *The Warble Fly Control Act* is repealed and the following substituted therefor:

(a) prescribing methods of treatment for warble fly.

R.S.O. 1960,  
c. 422, s. 7,  
amended

(2) The said section 7 is amended by adding thereto the following clause:

(ba) prescribing periods of the year for the purposes of subsection 2 of section 4.

Commence-  
ment

**5.** This Act comes into force on the day it receives Royal Assent.

Short title

**6.** This Act may be cited as *The Warble Fly Control Amendment Act, 1970*.



SECTION 3—Subsection 1. The periods in the year when an inspector may perform his duties under section 4 of the Act will hereafter be prescribed in the regulations.

Subsection 2. The liability of a cattle owner for the cost of treatment by an inspector is clarified.

SECTION 4—Subsection 1. Complementary to section 1, subsection 3.

Subsection 2. Complementary to section 3, subsection 1.





An Act to amend  
The Warble Fly Control Act

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*1st Reading*

April 22nd, 1970

*2nd Reading*

*3rd Reading*

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MR. STEWART

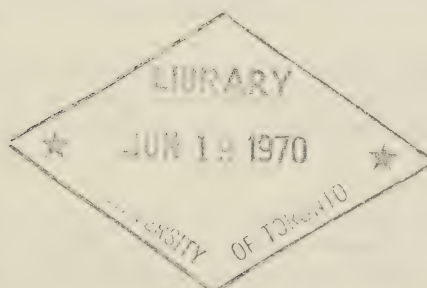
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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

An Act to amend The Warble Fly Control Act

MR. STEWART





## BILL 68

1970

## An Act to amend The Warble Fly Control Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause *d* of section 1 of *The Warble Fly Control Act* is amended by adding at the end thereof “and Food”, so that the clause shall read as follows: R.S.O. 1960,  
c. 422, s. 1,  
cl. *d*,  
amended

(*d*) “Minister” means the Minister of Agriculture and Food.

(2) Clause *e* of the said section 1 is repealed and the following substituted therefor: R.S.O. 1960,  
c. 422, s. 1,  
cl. *e*,  
re-enacted

(*e*) “municipality” means a city, town, village or township.

(3) Clause *g* of the said section 1 is repealed and the following substituted therefor: R.S.O. 1960,  
c. 422, s. 1,  
cl. *g*,  
re-enacted

(*g*) “treated for warble fly” means treated by a method prescribed in the regulations.

2. Subsection 1 of section 3 of *The Warble Fly Control Act* is amended by striking out “shall” in the fifth line and inserting in lieu thereof “may”, so that the subsection shall read as follows: R.S.O. 1960,  
c. 422, s. 3,  
subs. 1,  
amended

(1) Where the council of a municipality has passed a by-law under this Act, the council shall appoint before the 1st day of April in each year one or more inspectors to enforce the by-law, and for the treatment of cattle for warble fly, may purchase in such amounts as may be required such ingredients as may be designated by the regulations, and may purchase or otherwise acquire such equipment as it deems necessary. Appointment  
of inspectors;  
purchase of  
supplies

R.S.O. 1960,  
c. 422, s. 4,  
subs. 2,  
amended

**3.**—(1) Subsection 2 of section 4 of *The Warble Fly Control Act* is amended by striking out “on or after the 18th day of April in any year” in the first and second lines and inserting in lieu thereof “during such periods in any year as may be prescribed in the regulations”, so that the subsection shall read as follows:

Power of  
inspectors to  
treat for  
warble fly

(2) Where an inspector during such periods in any year as may be prescribed in the regulations finds upon inspection that a cattle owner has not treated his cattle for warble fly, or that treatment for warble fly by a cattle owner has not been effective in destroying warble fly grubs, the inspector may treat the cattle or cause the cattle to be treated for warble fly.

R.S.O. 1960,  
c. 422, s. 4,  
subs. 3,  
re-enacted

(2) Subsection 3 of the said section 4 is repealed and the following substituted therefor:

Cost of  
treatment  
for warble  
fly

(3) Where an inspector treats cattle or causes cattle to be treated for warble fly, the cattle owner is liable for the cost of the treatment, and such cost is payable on demand and is recoverable in any court of competent jurisdiction.

R.S.O. 1960,  
c. 422, s. 7,  
cl. a,  
re-enacted

**4.**—(1) Clause *a* of section 7 of *The Warble Fly Control Act* is repealed and the following substituted therefor:

(a) prescribing methods of treatment for warble fly.

R.S.O. 1960,  
c. 422, s. 7,  
amended

(2) The said section 7 is amended by adding thereto the following clause:

(ba) prescribing periods of the year for the purposes of subsection 2 of section 4.

Commence-  
ment

**5.** This Act comes into force on the day it receives Royal Assent.

Short title

**6.** This Act may be cited as *The Warble Fly Control Amendment Act, 1970*.









An Act to amend  
The Warble Fly Control Act

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*1st Reading*

April 22nd, 1970

*2nd Reading*

May 7th, 1970

*3rd Reading*

May 14th, 1970

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MR. STEWART

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to amend The Mining Act**

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MR. LAWRENCE (St. George)

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EXPLANATORY NOTES

SECTION 1. Complementary to section 2 of the Bill.

SECTION 2. The name of the Department of Mines is changed to the Department of Mines and Northern Affairs.

BILL 69

1970

## An Act to amend The Mining Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraphs 4 and 5 and paragraph 5a, as enacted by section 1 of *The Mining Amendment Act, 1968*, of section 1 of *The Mining Act* are repealed and the following substituted therefor:

R.S.O. 1960,  
c. 241, s. 1,  
pars. 4, 5,  
par. 5a  
(1968, c. 71,  
s. 1),  
re-enacted

4. "Department" means the Department of Mines and Northern Affairs;

5. "Deputy Minister" means the Deputy Minister of Mines and Northern Affairs;

5a. "Director" means the Director of the Mining Lands Branch of the Department.

(2) Paragraph 17 of the said section 1 is repealed and the following substituted therefor:

R.S.O. 1960,  
c. 241, s. 1,  
par. 17,  
re-enacted

17. "Minister" means the Minister of Mines and Northern Affairs.

2.—(1) Section 4 of *The Mining Act* is repealed and the following substituted therefor:

R.S.O. 1960,  
c. 241, s. 4,  
re-enacted

4. The Department of Mines is continued under the name of the Department of Mines and Northern Affairs.

Department  
of Mines and  
Northern  
Affairs

(2) Any mention of or reference to the Minister of Mines or the Department of Mines in any Act or regulation shall be deemed to be a mention of or reference to the Minister of Mines and Northern Affairs or the Department of Mines and Northern Affairs, respectively.

References  
to  
Department  
or Minister  
of Mines

R.S.O. 1960,  
c. 241, s. 6,  
subs. 1,  
amended      **3.** Subsection 1 of section 6 of *The Mining Act* is amended by inserting after "Mines" in the first line "and Northern Affairs".

R.S.O. 1960,  
c. 241,  
amended      **4.** *The Mining Act* is amended by adding thereto the following section:

Inspection  
of minerals      **13a.**—(1) An inspector may enter upon any lands for the purpose of gathering information respecting minerals or mineral rights and may enter any structure or works for the purpose of gathering information respecting ore and may take therefrom representative samples of minerals and ore sufficient for the purpose of testing or analysis.

Enforcement      (2) An inspector shall be deemed to be an officer appointed under this Act for the purposes of section 620.

R.S.O. 1960,  
c. 241, s. 15,  
amended      **5.** Section 15 of *The Mining Act* is amended by inserting after "Mines" in the fourth line, in the seventh line, in the eleventh line and in the twelfth line "and Northern Affairs".

R.S.O. 1960,  
c. 241, s. 16,  
amended      **6.** Section 16 of *The Mining Act*, as amended by section 5 of *The Mining Amendment Act, 1962-63*, is further amended by adding thereto the following subsections:

Protection  
from  
personal  
liability      (3) No action or other proceeding for damages shall be instituted against the Deputy Minister, the Commissioner, or any officer of the Department or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

Officers  
designated  
by Minister      (4) In addition to the persons otherwise constituted officers of the Department by this Act, any employee of the Department designated in writing by the Minister as an officer of the Department shall be deemed to be an officer of the Department for the purposes of this section.

R.S.O. 1960,  
c. 241, s. 17,  
amended      **7.**—(1) Section 17 of *The Mining Act*, as amended by section 3 of *The Mining Amendment Act, 1968*, is further amended by striking out "every inspector" in the amendment of 1968 and inserting in lieu thereof "Director of the Northern Affairs Branch of the Department", so that the section shall read as follows:

*Ex officio*  
justices of  
the peace      **17.** The Commissioner, Director, Supervisor and Director of the Northern Affairs Branch of the Department are *ex officio* justices of the peace for every county



SECTION 3. Self-explanatory.

SECTIONS 4 and 5. Complementary to section 2 of the Bill.

SECTION 6. The amendment would afford some protection for those required to form opinions and recommendations as to standards and quality of ore or operations.

SECTION 7—Subsection 1. Inspectors are deleted from being *ex officio* justices of the peace as it is no longer necessary.

Subsection 2. Mining recorders are made commissioners for taking affidavits outside their district to permit them to lend assistance in other districts when required.

SECTIONS 8 and 9. Complementary to section 2 of the Bill. The reference to the Laboratory and Research Branch is brought up to date.

SECTION 10—Subsections 1 and 5. The amendment increases the work credit for deep holes.

and district in Ontario and a recorder in his division is *ex officio* a justice of the peace for the county or district in which any part of his division lies, and it is not necessary that they possess any residential or property qualification.

(2) The said section 17 is further amended by adding thereto the following subsection: R.S.O. 1960,  
c. 241, s. 17,  
amended

- (2) Every mining recorder and person designated by the Minister in writing as a Northern Affairs officer is *ex officio* a commissioner for taking affidavits in Ontario. Recorders,  
commis-  
sioners for  
affidavits

**8.**—(1) Clause *c* of section 37 of *The Mining Act*, as re-enacted by section 9 of *The Mining Amendment Act, 1962-63*, is amended by inserting after “Mines” in the fourth line “and Northern Affairs”. R.S.O. 1960,  
c. 241, s. 37,  
cl. *c*  
(1962-63,  
c. 84, s. 9),  
amended

(2) Clause *d* of the said section 37 is amended by inserting after “Mines” in the fifth line “and Northern Affairs”. R.S.O. 1960,  
c. 241, s. 37,  
cl. *d*,  
amended

**9.** Subsection 1 of section 69 of *The Mining Act*, as amended by section 18 of *The Mining Amendment Act, 1962-63*, is further amended by striking out “Chief, Laboratory Branch, Department of Mines” in the amendment of 1962-63 and inserting in lieu thereof “Director, Laboratory and Research Branch, Department of Mines and Northern Affairs”, so that the subsection shall read as follows: R.S.O. 1960,  
c. 241, s. 69,  
subs. 1,  
amended

- (1) Every licensee who stakes out and records a mining claim may obtain from the recorder two free assay coupons on recording it and two additional free assay coupons on recording each forty days work thereafter and on forwarding or delivering, charges prepaid, samples from the mining claim to the Director, Laboratory and Research Branch, Department of Mines and Northern Affairs, Toronto, together with the required number of coupons, as provided in the regulations, is entitled to have the samples assayed without charge, but in no case is a licensee entitled to more than eighteen free assay coupons in a licence year. Free  
assays

**10.**—(1) Subsection 5 of section 84 of *The Mining Act*, as amended by subsection 1 of section 4 of *The Mining Amendment Act, 1968*, is further amended by adding “and” “at the end of clause *b* and by adding thereto the following clause: R.S.O. 1960,  
c. 241, s. 84,  
subs. 5,  
amended

- (*c*) where a certificate has been issued under subsection 6*f* of section 83, in respect of boring in excess of 4,000 feet, at the rate of one and a half days for each

foot of boring that is more than 4,000 feet and not more than 5,000 feet and two days for each foot of boring that is more than 5,000 feet,

R.S.O. 1960, c. 241, s. 84, subs. 8a (1968, c. 71, s. 4, subs. 3), is repealed and the following substituted therefor:

Credits for performance and coverage

(8a) Notwithstanding subsections 8, 9 and 9a, but subject to the maximum credits permitted therein, if a ground geophysical or a geological or a geochemical survey meets the requirements of the Minister, he may authorize the approval of work credits on the basis of performance and coverage, subject to the limitations prescribed in the requirements, but credit for the work shall be cancelled by the recorder unless full reports and plans in duplicate, satisfactory to the Minister, are submitted to the Minister within sixty days of the recording of the work and are approved.

R.S.O. 1960, c. 241, s. 84, subs. 9b (1968, c. 71, s. 4, subs. 4), is repealed and the following substituted therefor:

Radiometric surveys

(9b) A radiometric survey shall be deemed to be a geophysical survey for the purposes of this section.

R.S.O. 1960, c. 241, s. 84, subs. 14a (1968, c. 71, s. 4, subs. 6), is amended by striking out "Laboratory Branch, Department of Mines" in the fifth line and inserting in lieu thereof "Laboratory and Research Branch, Department of Mines and Northern Affairs", so that the subsection shall read as follows:

Expenditure where coupons used

(14a) Where work submitted under subsection 14 has been paid for with a coupon or coupons obtained under section 69, the expenditure represented shall be calculated according to the schedule of charges of the Laboratory and Research Branch, Department of Mines and Northern Affairs.

Application of subsection 1

(5) Subsection 1 does not apply to boring recorded for work credits before this section comes into force.

R.S.O. 1960, c. 241, s. 106 (1968-69, c. 68, s. 6), amended

**11.** Section 106 of *The Mining Act*, as re-enacted by section 6 of *The Mining Amendment Act, 1968-69*, is amended by adding thereto the following subsection:



Subsection 2. Geochemical surveys are added to the surveys for which work credits may be on the basis of coverage rather than time.

Subsection 3. Radiometric surveys are put on the same basis as geophysical surveys.

Subsection 4. Complementary to section 2 of the Bill.

SECTION 11. The amendment permits the Minister to determine differences as to what is usable in the arts without further treatment for the requirement that ore be refined in Canada.

SECTION 12. The bonding required for large exploratory licences is widened from cash to permit the forms of securities listed.

SECTIONS 13 and 14. Since 1953 all new leases have been exempt from acreage tax but references to leases were retained as having some application to outstanding leases. These are now removed because there are none left.

- (1a) For the purposes of subsection 1, the Minister may <sup>Idem</sup> determine the stage of refinement at which any mineral substance is refined metal or other product suitable for direct use in the arts without further treatment.

**12.** Paragraph 6 of subsection 1 of section 657 of *The Mining Act* is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 657, subs. 1, par. 6, re-enacted</sup>

6. Before the issue of a licence the applicant therefor shall furnish to the Minister a deposit of \$25,000 which shall be in cash or in,

(a) bearer bonds of,

(i) the Province of Ontario,

(ii) The Hydro-Electric Power Commission of Ontario, or

(iii) the Government of Canada; or

(b) the form of a promissory note guaranteed by a chartered bank of Canada, which shall be retained by the Minister until the licence expires or is surrendered when it shall be returned to the licensee, except that where the licensee has not complied with this section and with the conditions of the licence to the satisfaction of the Minister, the deposit is forfeited to and becomes the property of the Crown.

**13.—**(1) Clause *a* of subsection 1 of section 661 of *The Mining Act* is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 661, subs. 1, cl. *a*, re-enacted</sup>

(a) all lands and mining rights in territory without municipal organization patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes.

(2) Clause *c* of subsection 1 of the said section 661 is <sup>R.S.O. 1960, c. 241, s. 661, subs. 1, cl. *c*, re-enacted</sup> repealed and the following substituted therefor:

(c) all mining rights in, upon or under lands in a municipality patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes.

(3) Subsection 2 of the said section 661 is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 661, subs. 2, re-enacted</sup>

Exemption  
from tax

- (2) No acreage tax is payable in respect of mining lands or mining rights granted by the Crown by lease or renewal of lease.

R.S.O. 1960,  
c. 241, s. 662,  
subs. 1,  
re-enacted

**14.** Subsection 1 of section 662 of *The Mining Act* is repealed and the following substituted therefor:

Exemptions  
from tax  
by Minister

- (1) The Minister may exempt lands or mining rights from the tax under this Part where,
- (a) land has been subdivided by a registered plan into lots or parcels for city, town, village or summer resort purposes and there is no severance of the surface and mining rights;
  - (b) land is being actually used for public park, educational, religious or cemetery purposes and there is no severance of the surface and mining rights;
  - (c) land is in *bona fide* use for farming or other agricultural purposes and there is no severance of the surface and mining rights; or
  - (d) the mining rights in, upon or under any land situated south of the French River, Lake Nipissing and the Mattawa River, including the Territorial District of Manitoulin, are being held, used or developed solely for the production of natural gas or petroleum.

R.S.O. 1960,  
c. 241, s. 671,  
subs. 1,  
re-enacted

**15.** Subsection 1 of section 671 of *The Mining Act*, as amended by subsection 1 of section 47 of *The Mining Amendment Act, 1962-63*, is repealed and the following substituted therefor:

Defaulters  
list and  
notice of  
forfeitures

- (1) The Deputy Minister shall cause to be prepared between the 1st day of January and the 31st day of March in each year a list of all lands and mining rights in respect of which any acreage tax is two years or more in arrear, and, not later than the 30th day of June next following, shall cause to be sent by registered mail a notice to the person appearing from search or inquiry at the registry or land titles office to be the owner of the property in default and to every person appearing from that search or inquiry to have an interest therein, at the address or last known address of such person so far as he can reasonably ascertain it, stating that, unless the total amount of tax and penalties due and payable



SECTION 15. The amendment permits notice of arrears of acreage tax to be sent to the latest address ascertainable by the Deputy Minister. The costs of forfeiture are increased from \$5 to \$10 per property.

SECTION 16. The amendment ensures that the Department of Mines has status to acquire material preliminary to a decision to forfeit lands for arrears of acreage tax.

SECTION 17. The amendment provides for a fee for filing documents.

SECTION 18. The new section confirms the validity of tax sales for arrears of acreage tax. The last such confirmation was in *The Mining Amendment Act, 1962-63*, section 50.

under this Part are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following, and to the amount so due and payable there shall in every case be added and paid as costs the sum of \$10 for each property.

**16.** Subsection 1 of section 674 of *The Mining Act* is amended by inserting after "Council" in the first line "upon the recommendation of the Minister", so that the subsection shall read as follows:

R.S.O. 1960,  
c. 241, s. 674,  
subs. 1,  
amended

- (1) The Lieutenant Governor in Council, upon the recommendation of the Minister, may by order revoke, cancel or annul the forfeiture of any lands or mining rights under this Part, and the Deputy Minister shall cause the order to be registered in the proper land titles office or registry office and thereupon the lands or mining rights revest in the owner or lessee of the lands or mining rights at the time of forfeiture, his heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture and still outstanding.

Annulment  
of forfeiture

**17.** Item 28 of the Schedule to *The Mining Act*, as re-enacted by section 9 of *The Mining Amendment Act, 1965*, is repealed and the following substituted therefor:

R.S.O. 1960,  
c. 241,  
Sched.,  
item 28  
(1965, c. 73,  
s. 9),  
re-enacted

28. For consenting to or for filing any acceptable document relating to a mining lease or licence of occupation other than a transfer . . . . 2.00

**18.** Every forfeiture of lands and mining rights heretofore made under Part XIV of *The Mining Act* shall be deemed to be valid notwithstanding that such forfeiture would, but for this section, be invalid or void.

Previous  
forfeitures  
validated

**19.**—(1) This Act, except sections 13, 14 and 15, comes into force on the day it receives Royal Assent.

Commence-  
ment

(2) Sections 13, 14 and 15 shall be deemed to have come into force on the 1st day of January, 1970.

Idem

**20.** This Act may be cited as *The Mining Amendment Act, 1970*. (No. 2).

Short title

An Act to amend The Mining Act

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*1st Reading*

April 22nd, 1970

*2nd Reading*

*3rd Reading*

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MR. LAWRENCE (St. George)

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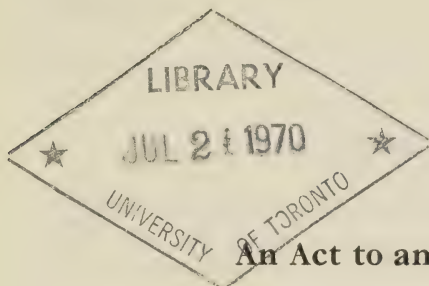
## BILL 69

Government  
Publications

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to amend The Mining Act**

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MR. LAWRENCE (St. George)

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*(Reprinted as amended by the Committee of the Whole House)*

#### EXPLANATORY NOTES

SECTION 1. Complementary to section 2 of the Bill.

SECTION 2. The name of the Department of Mines is changed to the Department of Mines and Northern Affairs.

BILL 69

1970

## An Act to amend The Mining Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraphs 4 and 5 and paragraph 5a, as enacted by section 1 of *The Mining Amendment Act, 1968*, of section 1 of *The Mining Act* are repealed and the following substituted therefor: R.S.O. 1960, c. 241, s. 1, pars. 4; 5; par. 5a; (1968, c. 71, s. 1), re-enacted

4. "Department" means the Department of Mines and Northern Affairs;

5. "Deputy Minister" means the Deputy Minister of Mines and Northern Affairs;

5a. "Director" means the Director of the Mining Lands Branch of the Department.

(2) Paragraph 17 of the said section 1 is repealed and the following substituted therefor: R.S.O. 1960, c. 241, s. 1, par. 17, re-enacted

17. "Minister" means the Minister of Mines and Northern Affairs.

2.—(1) Section 4 of *The Mining Act* is repealed and the following substituted therefor: R.S.O. 1960, c. 241, s. 4, re-enacted

4. The Department of Mines is continued under the name of the Department of Mines and Northern Affairs. Department of Mines and Northern Affairs

(2) Any mention of or reference to the Minister of Mines or the Department of Mines in any Act or regulation shall be deemed to be a mention of or reference to the Minister of Mines and Northern Affairs or the Department of Mines and Northern Affairs, respectively. References to Department or Minister of Mines

R.S.O. 1960,  
c. 241, s. 6,  
subs. 1,  
amended

**3.** Subsection 1 of section 6 of *The Mining Act* is amended by inserting after "Mines" in the first line "and Northern Affairs".

R.S.O. 1960,  
c. 241,  
amended

**4.** *The Mining Act* is amended by adding thereto the following section:

Inspection  
of minerals

**13a.**—(1) An inspector may enter upon any lands for the purpose of gathering information respecting minerals or mineral rights and may enter any structure or works for the purpose of gathering information respecting ore and may take therefrom representative samples of minerals and ore sufficient for the purpose of testing or analysis.

Enforcement

(2) An inspector shall be deemed to be an officer appointed under this Act for the purposes of section 620.

R.S.O. 1960,  
c. 241, s. 15,  
amended

**5.** Section 15 of *The Mining Act* is amended by inserting after "Mines" in the fourth line, in the seventh line, in the eleventh line and in the twelfth line "and Northern Affairs".

R.S.O. 1960,  
c. 241, s. 16,  
amended

**6.** Section 16 of *The Mining Act*, as amended by section 5 of *The Mining Amendment Act, 1962-63*, is further amended by adding thereto the following subsections:

Protection  
from  
personal  
liability

(3) No action or other proceeding for damages shall be instituted against the Deputy Minister, the Commissioner, or any officer of the Department or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

Officers  
designated  
by Minister

(4) In addition to the persons otherwise constituted officers of the Department by this Act, any employee of the Department designated in writing by the Minister as an officer of the Department shall be deemed to be an officer of the Department for the purposes of this section.

R.S.O. 1960,  
c. 241, s. 17,  
amended

**7.**—(1) Section 17 of *The Mining Act*, as amended by section 3 of *The Mining Amendment Act, 1968*, is further amended by striking out "every inspector" in the amendment of 1968 and inserting in lieu thereof "Director of the Northern Affairs Branch of the Department", so that the section shall read as follows:

*Ex officio*  
justices of  
the peace

**17.** The Commissioner, Director, Supervisor and Director of the Northern Affairs Branch of the Department are *ex officio* justices of the peace for every county



SECTION 3. Self-explanatory.

SECTIONS 4 and 5. Complementary to section 2 of the Bill.

SECTION 6. The amendment would afford some protection for those required to form opinions and recommendations as to standards and quality of ore or operations.

SECTION 7—Subsection 1. Inspectors are deleted from being *ex officio* justices of the peace as it is no longer necessary.

Subsection 2. Mining recorders are made commissioners for taking affidavits outside their district to permit them to lend assistance in other districts when required.

SECTIONS 8 and 9. Complementary to section 2 of the Bill. The reference to the Laboratory and Research Branch is brought up to date.

SECTION 10—Subsections 1 and 5. The amendment increases the work credit for deep holes.

and district in Ontario and a recorder in his division is *ex officio* a justice of the peace for the county or district in which any part of his division lies, and it is not necessary that they possess any residential or property qualification.

(2) The said section 17 is further amended by adding thereto the following subsection: R.S.O. 1960,  
c. 241, s. 17,  
amended

(2) Every mining recorder and person designated by the Minister in writing as a Northern Affairs officer is *ex officio* a commissioner for taking affidavits in Ontario. Recorders,  
commis-  
sioners for  
affidavits

8.—(1) Clause *c* of section 37 of *The Mining Act*, as re-enacted by section 9 of *The Mining Amendment Act, 1962-63*, is amended by inserting after "Mines" in the fourth line "and Northern Affairs". R.S.O. 1960,  
c. 241, s. 37,  
cl. *c*  
(1962-63,  
c. 84, s. 9),  
amended

(2) Clause *d* of the said section 37 is amended by inserting after "Mines" in the fifth line "and Northern Affairs". R.S.O. 1960,  
c. 241, s. 37,  
cl. *d*,  
amended

9. Subsection 1 of section 69 of *The Mining Act*, as amended by section 18 of *The Mining Amendment Act, 1962-63*, is further amended by striking out "Chief, Laboratory Branch, Department of Mines" in the amendment of 1962-63 and inserting in lieu thereof "Director, Laboratory and Research Branch, Department of Mines and Northern Affairs", so that the subsection shall read as follows: R.S.O. 1960,  
c. 241, s. 69,  
subs. 1,  
amended

(1) Every licensee who stakes out and records a mining claim may obtain from the recorder two free assay coupons on recording it and two additional free assay coupons on recording each forty days work thereafter and on forwarding or delivering, charges prepaid, samples from the mining claim to the Director, Laboratory and Research Branch, Department of Mines and Northern Affairs, Toronto, together with the required number of coupons, as provided in the regulations, is entitled to have the samples assayed without charge, but in no case is a licensee entitled to more than eighteen free assay coupons in a licence year. Free  
assays

10.—(1) Subsection 5 of section 84 of *The Mining Act*, as amended by subsection 1 of section 4 of *The Mining Amendment Act, 1968*, is further amended by adding "and" "at the end of clause *b* and by adding thereto the following clause: R.S.O. 1960,  
c. 241, s. 84,  
subs. 5,  
amended

(c) where a certificate has been issued under subsection 6f of section 83, in respect of boring in excess of 4,000 feet, at the rate of one and a half days for each

foot of boring that is more than 4,000 feet and not more than 5,000 feet and two days for each foot of boring that is more than 5,000 feet,

R.S.O. 1960, c. 241, s. 84, subs. 8a (1968, c. 71, s. 4, subs. 3), re-enacted (2) Subsection 8a of the said section 84, as enacted by subsection 3 of section 4 of *The Mining Amendment Act, 1968*, is repealed and the following substituted therefor:

Credits for performance and coverage

(8a) Notwithstanding subsections 8, 9 and 9a, but subject to the maximum credits permitted therein, if a ground geophysical or a geological or a geochemical survey meets the requirements of the Minister, he may authorize the approval of work credits on the basis of performance and coverage, subject to the limitations prescribed in the requirements, but credit for the work shall be cancelled by the recorder unless full reports and plans in duplicate, satisfactory to the Minister, are submitted to the Minister within sixty days of the recording of the work and are approved.

R.S.O. 1960, c. 241, s. 84, subs. 9b (1968, c. 71, s. 4, subs. 4), re-enacted (3) Subsection 9b of the said section 84, as enacted by subsection 4 of section 4 of *The Mining Amendment Act, 1968*, is repealed and the following substituted therefor:

Radiometric surveys

(9b) A radiometric survey shall be deemed to be a geophysical survey for the purposes of this section.

R.S.O. 1960, c. 241, s. 84, subs. 14a (1968, c. 71, s. 4, subs. 6), amended (4) Subsection 14a of the said section 84, as enacted by subsection 6 of section 4 of *The Mining Amendment Act, 1968*, is amended by striking out "Laboratory Branch, Department of Mines" in the fifth line and inserting in lieu thereof "Laboratory and Research Branch, Department of Mines and Northern Affairs", so that the subsection shall read as follows:

Expenditure where coupons used

(14a) Where work submitted under subsection 14 has been paid for with a coupon or coupons obtained under section 69, the expenditure represented shall be calculated according to the schedule of charges of the Laboratory and Research Branch, Department of Mines and Northern Affairs.

Application of subsection 1

(5) Subsection 1 does not apply to boring recorded for work credits before this section comes into force.

R.S.O. 1960, c. 241, s. 106 (1968-69, c. 68, s. 6), amended **11.** Section 106 of *The Mining Act*, as re-enacted by section 6 of *The Mining Amendment Act, 1968-69*, is amended by adding thereto the following subsection:



Subsection 2. Geochemical surveys are added to the surveys for which work credits may be on the basis of coverage rather than time.

Subsection 3. Radiometric surveys are put on the same basis as geophysical surveys.

Subsection 4. Complementary to section 2 of the Bill.

SECTION 11. The amendment permits the Minister to determine differences as to what is usable in the arts without further treatment for the requirement that ore be refined in Canada.

SECTION 12. The bonding required for large exploratory licences is widened from cash to permit the forms of securities listed.

SECTIONS 13 and 14. Since 1953 all new leases have been exempt from acreage tax but references to leases were retained as having some application to outstanding leases. These are now removed because there are none left.

- (1a) For the purposes of subsection 1, the Minister may <sup>Idem</sup> determine the stage of refinement at which any mineral substance is refined metal or other product suitable for direct use in the arts without further treatment.

**12.** Paragraph 6 of subsection 1 of section 657 of *The Mining Act* is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 657, subs. 1, par. 6, re-enacted</sup>

6. Before the issue of a licence the applicant therefor shall furnish to the Minister a deposit of \$25,000 which shall be in cash or in,

(a) bearer bonds of,

(i) the Province of Ontario,

(ii) The Hydro-Electric Power Commission of Ontario, or

(iii) the Government of Canada; or

(b) the form of a promissory note guaranteed by a chartered bank of Canada, which shall be retained by the Minister until the licence expires or is surrendered when it shall be returned to the licensee, except that where the licensee has not complied with this section and with the conditions of the licence to the satisfaction of the Minister, the deposit is forfeited to and becomes the property of the Crown.

**13.—**(1) Clause *a* of subsection 1 of section 661 of *The Mining Act* is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 661, subs. 1, cl. a, re-enacted</sup>

(a) all lands and mining rights in territory without municipal organization patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes.

(2) Clause *c* of subsection 1 of the said section 661 is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 661, subs. 1, cl. c, re-enacted</sup>

(c) all mining rights in, upon or under lands in a municipality patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes.

(3) Subsection 2 of the said section 661 is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 661, subs. 2, re-enacted</sup>

Exemption  
from tax

- (2) No acreage tax is payable in respect of mining lands or mining rights granted by the Crown by lease or renewal of lease.

R.S.O. 1960,  
c. 241, s. 662,  
subs. 1,  
re-enacted

**14.** Subsection 1 of section 662 of *The Mining Act* is repealed and the following substituted therefor:

Exemptions  
from tax  
by Minister

- (1) The Minister may exempt lands or mining rights from the tax under this Part where,
- (a) land has been subdivided by a registered plan into lots or parcels for city, town, village or summer resort purposes and there is no severance of the surface and mining rights;
  - (b) land is being actually used for public park, educational, religious or cemetery purposes and there is no severance of the surface and mining rights;
  - (c) land is in *bona fide* use for farming or other agricultural purposes and there is no severance of the surface and mining rights; or
  - (d) the mining rights in, upon or under any land situated south of the French River, Lake Nipissing and the Mattawa River, including the Territorial District of Manitoulin, are being held, used or developed solely for the production of natural gas or petroleum.

R.S.O. 1960,  
c. 241, s. 671,  
subs. 1,  
re-enacted

**15.** Subsection 1 of section 671 of *The Mining Act*, as amended by subsection 1 of section 47 of *The Mining Amendment Act, 1962-63*, is repealed and the following substituted therefor:

Defaulters  
list and  
notice of  
forfeitures

- (1) The Deputy Minister shall cause to be prepared between the 1st day of January and the 31st day of March in each year a list of all lands and mining rights in respect of which any acreage tax is two years or more in arrear, and, not later than the 30th day of June next following, shall cause to be sent by registered mail a notice to the person appearing from search or inquiry at the registry or land titles office to be the owner of the property in default and to every person appearing from that search or inquiry to have an interest therein, at the address or last known address of such person so far as he can reasonably ascertain it, stating that, unless the total amount of tax and penalties due and payable



SECTION 15. The amendment permits notice of arrears of acreage tax to be sent to the latest address ascertainable by the Deputy Minister. The costs of forfeiture are increased from \$5 to \$10 per property.

SECTION 16. The amendment ensures that the Department of Mines has status to acquire material preliminary to a decision to forfeit lands for arrears of acreage tax.

SECTION 17. The amendment provides for a fee for filing documents.

SECTION 18. The new section confirms the validity of tax sales for arrears of acreage tax. The last such confirmation was in *The Mining Amendment Act, 1962-63*, section 50.

under this Part are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following, and to the amount so due and payable there shall in every case be added and paid as costs the sum of \$10 for each property.

**16.** Subsection 1 of section 674 of *The Mining Act* is amended by inserting after "Council" in the first line "upon the recommendation of the Minister", so that the subsection shall read as follows:

R.S.O. 1960,  
c. 241, s. 674,  
subs. 1,  
amended

- (1) The Lieutenant Governor in Council, upon the recommendation of the Minister, may by order revoke, cancel or annul the forfeiture of any lands or mining rights under this Part, and the Deputy Minister shall cause the order to be registered in the proper land titles office or registry office and thereupon the lands or mining rights revert in the owner or lessee of the lands or mining rights at the time of forfeiture, his heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture and still outstanding.

Annulment  
of forfeiture

**17.** Item 28 of the Schedule to *The Mining Act*, as re-enacted by section 9 of *The Mining Amendment Act, 1965*, is repealed and the following substituted therefor:

R.S.O. 1960,  
c. 241,  
Sched.,  
item 28  
(1965, c. 73,  
s. 9),  
re-enacted

28. For consenting to or for filing any acceptable document relating to a mining lease or licence of occupation other than a transfer . . . 2.00

**18.** Every forfeiture of lands and mining rights heretofore made under Part XIV of *The Mining Act* shall be deemed to be valid notwithstanding that such forfeiture would, but for this section, be invalid or void.

Previous  
forfeitures  
validated

**19.** The expenditures necessary for the purposes of the Northern Affairs Branch of the Department of Mines and Northern Affairs shall, until the 31st day of March, 1971, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

Moneys re  
Northern  
Affairs  
Branch

**20.**—(1) This Act, except sections 13, 14 and 15, comes into force on the day it receives Royal Assent.

Commence-  
ment

(2) Sections 13, 14 and 15 shall be deemed to have come into force on the 1st day of January, 1970.

Idem

**21.** This Act may be cited as *The Mining Amendment Act, 1970*. (No. 2).

Short title

An Act to amend The Mining Act

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*1st Reading*

April 22nd, 1970

*2nd Reading*

June 2nd, 1970

*3rd Reading*

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MR. LAWRENCE (St. George)

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*(Reprinted as amended by the  
Committee of the Whole House)*



**BILL 69**

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to amend The Mining Act**

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MR. LAWRENCE (St. George)

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## BILL 69

1970

## An Act to amend The Mining Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraphs 4 and 5 and paragraph 5a, as enacted by section 1 of *The Mining Amendment Act, 1968*, of section 1 of *The Mining Act* are repealed and the following substituted therefor:

R.S.O. 1960,  
c. 241, s. 1,  
pars. 4, 5,  
par. 5a  
(1968, c. 71,  
s. 1),  
re-enacted

4. "Department" means the Department of Mines and Northern Affairs;

5. "Deputy Minister" means the Deputy Minister of Mines and Northern Affairs;

5a. "Director" means the Director of the Mining Lands Branch of the Department.

(2) Paragraph 17 of the said section 1 is repealed and the following substituted therefor:

R.S.O. 1960,  
c. 241, s. 1,  
par. 17,  
re-enacted

17. "Minister" means the Minister of Mines and Northern Affairs.

2.—(1) Section 4 of *The Mining Act* is repealed and the following substituted therefor:

R.S.O. 1960,  
c. 241, s. 4,  
re-enacted

4. The Department of Mines is continued under the name of the Department of Mines and Northern Affairs.

Department  
of Mines and  
Northern  
Affairs

(2) Any mention of or reference to the Minister of Mines or the Department of Mines in any Act or regulation shall be deemed to be a mention of or reference to the Minister of Mines and Northern Affairs or the Department of Mines and Northern Affairs, respectively.

References  
to  
Department  
or Minister  
of Mines

R.S.O. 1960,  
c. 241, s. 6,  
subs. 1,  
amended

**3.** Subsection 1 of section 6 of *The Mining Act* is amended by inserting after "Mines" in the first line "and Northern Affairs".

R.S.O. 1960,  
c. 241,  
amended

**4.** *The Mining Act* is amended by adding thereto the following section:

Inspection  
of minerals

**13a.**—(1) An inspector may enter upon any lands for the purpose of gathering information respecting minerals or mineral rights and may enter any structure or works for the purpose of gathering information respecting ore and may take therefrom representative samples of minerals and ore sufficient for the purpose of testing or analysis.

Enforcement

(2) An inspector shall be deemed to be an officer appointed under this Act for the purposes of section 620.

R.S.O. 1960,  
c. 241, s. 15,  
amended

**5.** Section 15 of *The Mining Act* is amended by inserting after "Mines" in the fourth line, in the seventh line, in the eleventh line and in the twelfth line "and Northern Affairs".

R.S.O. 1960,  
c. 241, s. 16,  
amended

**6.** Section 16 of *The Mining Act*, as amended by section 5 of *The Mining Amendment Act, 1962-63*, is further amended by adding thereto the following subsections:

Protection  
from  
personal  
liability

(3) No action or other proceeding for damages shall be instituted against the Deputy Minister, the Commissioner, or any officer of the Department or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

Officers  
designated  
by Minister

(4) In addition to the persons otherwise constituted officers of the Department by this Act, any employee of the Department designated in writing by the Minister as an officer of the Department shall be deemed to be an officer of the Department for the purposes of this section.

R.S.O. 1960,  
c. 241, s. 17,  
amended

**7.**—(1) Section 17 of *The Mining Act*, as amended by section 3 of *The Mining Amendment Act, 1968*, is further amended by striking out "every inspector" in the amendment of 1968 and inserting in lieu thereof "Director of the Northern Affairs Branch of the Department", so that the section shall read as follows:

*Ex officio*  
justices of  
the peace

**17.** The Commissioner, Director, Supervisor and Director of the Northern Affairs Branch of the Department are *ex officio* justices of the peace for every county



and district in Ontario and a recorder in his division is *ex officio* a justice of the peace for the county or district in which any part of his division lies, and it is not necessary that they possess any residential or property qualification.

(2) The said section 17 is further amended by adding thereto the following subsection: R.S.O. 1960,  
c. 241, s. 17,  
amended

(2) Every mining recorder and person designated by the Minister in writing as a Northern Affairs officer is *ex officio* a commissioner for taking affidavits in Ontario. Recorders,  
commis-  
sioners for  
affidavits

**8.**—(1) Clause *c* of section 37 of *The Mining Act*, as re-enacted by section 9 of *The Mining Amendment Act, 1962-63*, is amended by inserting after “Mines” in the fourth line “and Northern Affairs”. R.S.O. 1960,  
c. 241, s. 37,  
cl. *c*  
(1962-63,  
c. 84, s. 9),  
amended

(2) Clause *d* of the said section 37 is amended by inserting after “Mines” in the fifth line “and Northern Affairs”. R.S.O. 1960,  
c. 241, s. 37,  
cl. *d*,  
amended

**9.** Subsection 1 of section 69 of *The Mining Act*, as amended by section 18 of *The Mining Amendment Act, 1962-63*, is further amended by striking out “Chief, Laboratory Branch, Department of Mines” in the amendment of 1962-63 and inserting in lieu thereof “Director, Laboratory and Research Branch, Department of Mines and Northern Affairs”, so that the subsection shall read as follows: R.S.O. 1960,  
c. 241, s. 69,  
subs. 1,  
amended

(1) Every licensee who stakes out and records a mining claim may obtain from the recorder two free assay coupons on recording it and two additional free assay coupons on recording each forty days work thereafter and on forwarding or delivering, charges prepaid, samples from the mining claim to the Director, Laboratory and Research Branch, Department of Mines and Northern Affairs, Toronto, together with the required number of coupons, as provided in the regulations, is entitled to have the samples assayed without charge, but in no case is a licensee entitled to more than eighteen free assay coupons in a licence year. Free  
assays

**10.**—(1) Subsection 5 of section 84 of *The Mining Act*, as amended by subsection 1 of section 4 of *The Mining Amendment Act, 1968*, is further amended by adding “and” “at the end of clause *b* and by adding thereto the following clause: R.S.O. 1960  
c. 241, s. 84,  
subs. 5,  
amended

(*c*) where a certificate has been issued under subsection 6*f* of section 83, in respect of boring in excess of 4,000 feet, at the rate of one and a half days for each

foot of boring that is more than 4,000 feet and not more than 5,000 feet and two days for each foot of boring that is more than 5,000 feet,

R.S.O. 1960, c. 241, s. 84, subs. 8a (1968, c. 71, s. 4, subs. 3), re-enacted (2) Subsection 8a of the said section 84, as enacted by subsection 3 of section 4 of *The Mining Amendment Act, 1968*, is repealed and the following substituted therefor:

Credits for performance and coverage

(8a) Notwithstanding subsections 8, 9 and 9a, but subject to the maximum credits permitted therein, if a ground geophysical or a geological or a geochemical survey meets the requirements of the Minister, he may authorize the approval of work credits on the basis of performance and coverage, subject to the limitations prescribed in the requirements, but credit for the work shall be cancelled by the recorder unless full reports and plans in duplicate, satisfactory to the Minister, are submitted to the Minister within sixty days of the recording of the work and are approved.

R.S.O. 1960, c. 241, s. 84, subs. 9b (1968, c. 71, s. 4, subs. 4), re-enacted (3) Subsection 9b of the said section 84, as enacted by subsection 4 of section 4 of *The Mining Amendment Act, 1968*, is repealed and the following substituted therefor:

Radiometric surveys

(9b) A radiometric survey shall be deemed to be a geophysical survey for the purposes of this section.

R.S.O. 1960, c. 241, s. 84, subs. 14a (1968, c. 71, s. 4, subs. 6), amended (4) Subsection 14a of the said section 84, as enacted by subsection 6 of section 4 of *The Mining Amendment Act, 1968*, is amended by striking out "Laboratory Branch, Department of Mines" in the fifth line and inserting in lieu thereof "Laboratory and Research Branch, Department of Mines and Northern Affairs", so that the subsection shall read as follows:

Expenditure where coupons used

(14a) Where work submitted under subsection 14 has been paid for with a coupon or coupons obtained under section 69, the expenditure represented shall be calculated according to the schedule of charges of the Laboratory and Research Branch, Department of Mines and Northern Affairs.

Application of sub-section 1

(5) Subsection 1 does not apply to boring recorded for work credits before this section comes into force.

R.S.O. 1960, c. 241, s. 106 (1968-69, c. 68, s. 6), amended **11.** Section 106 of *The Mining Act*, as re-enacted by section 6 of *The Mining Amendment Act, 1968-69*, is amended by adding thereto the following subsection:

- (1a) For the purposes of subsection 1, the Minister may <sup>idem</sup> determine the stage of refinement at which any mineral substance is refined metal or other product suitable for direct use in the arts without further treatment.

**12.** Paragraph 6 of subsection 1 of section 657 of *The Mining Act* is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 657, subs. 1, par. 6, re-enacted</sup>

6. Before the issue of a licence the applicant therefor shall furnish to the Minister a deposit of \$25,000 which shall be in cash or in,

(a) bearer bonds of,

(i) the Province of Ontario,

(ii) The Hydro-Electric Power Commission of Ontario, or

(iii) the Government of Canada; or

(b) the form of a promissory note guaranteed by a chartered bank of Canada, which shall be retained by the Minister until the licence expires or is surrendered when it shall be returned to the licensee, except that where the licensee has not complied with this section and with the conditions of the licence to the satisfaction of the Minister, the deposit is forfeited to and becomes the property of the Crown.

**13.—**(1) Clause *a* of subsection 1 of section 661 of *The Mining Act* is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 661, subs. 1, cl. a, re-enacted</sup>

(a) all lands and mining rights in territory without municipal organization patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes.

(2) Clause *c* of subsection 1 of the said section 661 is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 661, subs. 1, cl. c, re-enacted</sup>

(c) all mining rights in, upon or under lands in a municipality patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes.

(3) Subsection 2 of the said section 661 is repealed and the following substituted therefor: <sup>R.S.O. 1960, c. 241, s. 661, subs. 2, re-enacted</sup>

Exemption  
from tax

- (2) No acreage tax is payable in respect of mining lands or mining rights granted by the Crown by lease or renewal of lease.

R.S.O. 1960,  
c. 241, s. 662,  
subs. 1,  
re-enacted

**14.** Subsection 1 of section 662 of *The Mining Act* is repealed and the following substituted therefor:

Exemptions  
from tax  
by Minister

- (1) The Minister may exempt lands or mining rights from the tax under this Part where,
- (a) land has been subdivided by a registered plan into lots or parcels for city, town, village or summer resort purposes and there is no severance of the surface and mining rights;
  - (b) land is being actually used for public park, educational, religious or cemetery purposes and there is no severance of the surface and mining rights;
  - (c) land is in *bona fide* use for farming or other agricultural purposes and there is no severance of the surface and mining rights; or
  - (d) the mining rights in, upon or under any land situated south of the French River, Lake Nipissing and the Mattawa River, including the Territorial District of Manitoulin, are being held, used or developed solely for the production of natural gas or petroleum.

R.S.O. 1960,  
c. 241, s. 671,  
subs. 1,  
re-enacted

**15.** Subsection 1 of section 671 of *The Mining Act*, as amended by subsection 1 of section 47 of *The Mining Amendment Act, 1962-63*, is repealed and the following substituted therefor:

Defaulters  
list and  
notice of  
forfeitures

- (1) The Deputy Minister shall cause to be prepared between the 1st day of January and the 31st day of March in each year a list of all lands and mining rights in respect of which any acreage tax is two years or more in arrear, and, not later than the 30th day of June next following, shall cause to be sent by registered mail a notice to the person appearing from search or inquiry at the registry or land titles office to be the owner of the property in default and to every person appearing from that search or inquiry to have an interest therein, at the address or last known address of such person so far as he can reasonably ascertain it, stating that, unless the total amount of tax and penalties due and payable



under this Part are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following, and to the amount so due and payable there shall in every case be added and paid as costs the sum of \$10 for each property.

**16.** Subsection 1 of section 674 of *The Mining Act* is amended by inserting after "Council" in the first line "upon the recommendation of the Minister", so that the subsection shall read as follows:

R.S.O. 1960,  
c. 241, s. 674,  
subs. 1,  
amended

- (1) The Lieutenant Governor in Council, upon the recommendation of the Minister, may by order revoke, cancel or annul the forfeiture of any lands or mining rights under this Part, and the Deputy Minister shall cause the order to be registered in the proper land titles office or registry office and thereupon the lands or mining rights revert in the owner or lessee of the lands or mining rights at the time of forfeiture, his heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture and still outstanding.

Annulment  
of forfeiture

**17.** Item 28 of the Schedule to *The Mining Act*, as re-enacted by section 9 of *The Mining Amendment Act, 1965*, is repealed and the following substituted therefor:

R.S.O. 1960,  
c. 241,  
Sched.,  
item 28  
(1965, c. 73,  
s. 9),  
re-enacted

28. For consenting to or for filing any acceptable document relating to a mining lease or licence of occupation other than a transfer . . . 2.00

**18.** Every forfeiture of lands and mining rights heretofore made under Part XIV of *The Mining Act* shall be deemed to be valid notwithstanding that such forfeiture would, but for this section, be invalid or void.

Previous  
forfeitures  
validated

**19.** The expenditures necessary for the purposes of the Northern Affairs Branch of the Department of Mines and Northern Affairs shall, until the 31st day of March, 1971, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

Moneys re  
Northern  
Affairs  
Branch

**20.**—(1) This Act, except sections 13, 14 and 15, comes into force on the day it receives Royal Assent.

Commence-  
ment

(2) Sections 13, 14 and 15 shall be deemed to have come into force on the 1st day of January, 1970.

Idem

**21.** This Act may be cited as *The Mining Amendment Act, 1970*. (No. 2).

Short title





An Act to amend The Mining Act

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*1st Reading*

April 22nd, 1970

*2nd Reading*

June 2nd, 1970

*3rd Reading*

June 25th, 1970

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MR. LAWRENCE (St. George)

---



ON

6

BILL 70

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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An Act to amend The Provincial Parks Act

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MR. BRUNELLE

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#### EXPLANATORY NOTE

The Bill provides for the appointment of advisory committees for one or more provincial parks.

BILL 70

1970

## An Act to amend The Provincial Parks Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** *The Provincial Parks Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 314,  
amended

3c. The Minister, with the approval of the Lieutenant Governor in Council, may appoint committees to perform such advisory functions as are considered necessary or desirable in connection with the administration of one or more of the provincial parks and fix the terms of reference and procedures of such committees. Advisory  
committees

**2.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**3.** This Act may be cited as *The Provincial Parks Amendment Act, 1970*. Short title

An Act to amend  
The Provincial Parks Act

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*1st Reading*

April 27th, 1970

*2nd Reading*

*3rd Reading*

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MR. BRUNELLE

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20W  
56  
Publication  
Government  
BILL 70

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

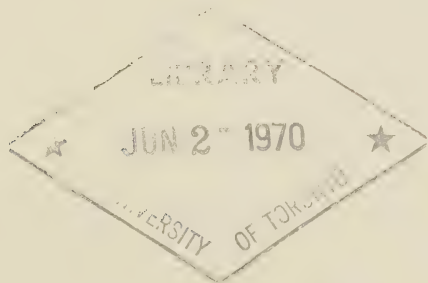
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An Act to amend The Provincial Parks Act

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MR. BRUNELLE

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BILL 70

1970

## An Act to amend The Provincial Parks Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Provincial Parks Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 314,  
amended

3c. The Minister, with the approval of the Lieutenant Governor in Council, may appoint committees to perform such advisory functions as are considered necessary or desirable in connection with the administration of one or more of the provincial parks and fix the terms of reference and procedures of such committees. Advisory  
committees

2. This Act comes into force on the day it receives Royal Assent. Commence-  
ment

3. This Act may be cited as *The Provincial Parks Amendment Act, 1970*. Short title

An Act to amend  
The Provincial Parks Act

*1st Reading*

April 27th, 1970

*2nd Reading*

May 7th, 1970

*3rd Reading*

May 14th, 1970

MR. BRUNELLE



**BILL 71**

3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

**An Act to amend The Operating Engineers Act, 1965**

MR. BALES



#### EXPLANATORY NOTE

The exemption of certain compressors from the Act and the regulations is enlarged.

BILL 71

1970

**An Act to amend  
The Operating Engineers Act, 1965**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Clause *j* of section 2 of *The Operating Engineers Act, 1965* is repealed and the following substituted therefor: <sup>1965, c. 92,  
s. 2, cl. j,  
re-enacted</sup>

(*j*) a compressor that, in the opinion of the chief officer, is situated in a remote area to which a person does not normally have access, and that is controlled automatically or by remote manual control.

(2) The said section 2 is amended by adding thereto the following clause: <sup>1965, c. 92,  
s. 2,  
amended</sup>

(*ma*) a compressor of a class that is exempted by the regulations.

**2.** This Act comes into force on the day it receives Royal Assent. <sup>Commence-  
ment</sup>

**3.** This Act may be cited as *The Operating Engineers Amendment Act, 1970*. <sup>Short title</sup>

An Act to amend  
The Operating Engineers Act, 1965

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*1st Reading*

April 28th, 1970

*2nd Reading*

*3rd Reading*

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MR. BALES

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

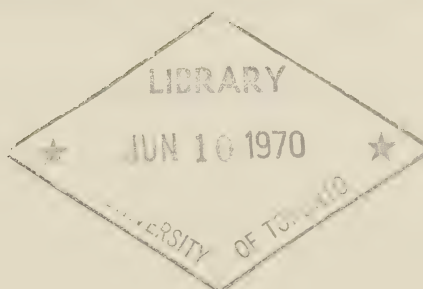
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**An Act to amend The Operating Engineers Act, 1965**

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MR. BALES

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BILL 71

1970

**An Act to amend  
The Operating Engineers Act, 1965**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Clause *j* of section 2 of *The Operating Engineers Act, 1965* is repealed and the following substituted therefor: <sup>1965, c. 92,  
s. 2, cl. j,  
re-enacted</sup>

(*j*) a compressor that, in the opinion of the chief officer, is situated in a remote area to which a person does not normally have access, and that is controlled automatically or by remote manual control.

(2) The said section 2 is amended by adding thereto the <sup>1965, c. 92,  
s. 2,  
amended</sup> following clause:

(*ma*) a compressor of a class that is exempted by the regulations.

**2.** This Act comes into force on the day it receives Royal <sup>Commence-  
ment</sup> Assent.

**3.** This Act may be cited as *The Operating Engineers <sup>Short title</sup> Amendment Act, 1970*.

An Act to amend  
The Operating Engineers Act, 1965

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*1st Reading*

April 28th, 1970

*2nd Reading*

May 19th, 1970

*3rd Reading*

May 26th, 1970

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MR. BALEs

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**BILL 72**

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to amend The Industrial Safety Act, 1964**

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Mr. BALES

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**TORONTO**

PRINTED AND PUBLISHED BY WILLIAM KINMOND, QUEEN'S PRINTER AND PUBLISHER

## EXPLANATORY NOTES

SECTION 1. Self-explanatory.

SECTION 2. Certain drawings and specifications are required to be signed and sealed by an architect or a professional engineer.

SECTION 3. The amended section is brought into conformity with *The Schools Administration Act*.

## BILL 72

1970

## An Act to amend The Industrial Safety Act, 1964

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Industrial Safety Act, 1964*, as amended <sup>1964, c. 45, s. 1,</sup> by section 1 of *The Industrial Safety Amendment Act, 1968*, <sup>amended</sup> is further amended by relettering clause *a* as clause *aa* and by adding thereto the following clauses:

(a) "architect" means a person registered as a member of the Ontario Association of Architects or a person who is licensed to practise as an architect under *The Architects Act*; R.S.O. 1960, c. 20

. . . . .

(ma) "professional engineer" means a person who is a member of the Association of Professional Engineers of the Province of Ontario or who is licensed to practise as a professional engineer under *The Professional Engineers Act, 1968-69*. 1968-69, s. 99

2. Section 16 of *The Industrial Safety Act, 1964*, as amended <sup>1964, c. 45, s. 16,</sup> by section 4 of *The Industrial Safety Amendment Act, 1968*, <sup>amended</sup> is further amended by adding thereto the following subsection:

(2a) Drawings and specifications of a building that is to be or is more than two storeys in height shall bear the signature and seal of a professional engineer or an architect. Drawings and specifications to be signed and sealed

3. Section 25 of *The Industrial Safety Act, 1964* is repealed and the following substituted therefor: 1964, c. 45, s. 25, re-enacted

25. No person shall employ in an industrial establishment during school hours a person who is required under *The Schools Administration Act* to attend school. Employment of adolescents R.S.O. 1960, c. 361

Commence-  
ment

**4.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

**5.** This Act may be cited as *The Industrial Safety Amendment Act, 1970*.

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An Act to amend  
The Industrial Safety Act, 1964

---

*1st Reading*

April 28th, 1970

*2nd Reading*

*3rd Reading*

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MR. BATES

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to amend The Industrial Safety Act, 1964**

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MR. BALES

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BILL 72

1970

## An Act to amend The Industrial Safety Act, 1964

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Industrial Safety Act, 1964*, as amended <sup>1964, c. 45, s. 1, amended</sup> by section 1 of *The Industrial Safety Amendment Act, 1968*, is further amended by relettering clause *a* as clause *aa* and by adding thereto the following clauses:

(a) "architect" means a person registered as a member of the Ontario Association of Architects or a person who is licensed to practise as an architect under *The Architects Act*; R.S.O. 1960, c. 20

(ma) "professional engineer" means a person who is a member of the Association of Professional Engineers of the Province of Ontario or who is licensed to practise as a professional engineer under *The Professional Engineers Act, 1968-69*. 1968-69, c. 99

2. Section 16 of *The Industrial Safety Act, 1964*, as amended <sup>1964, c. 45, s. 16, amended</sup> by section 4 of *The Industrial Safety Amendment Act, 1968*, is further amended by adding thereto the following subsection:

(2a) Drawings and specifications of a building that is to be or is more than two storeys in height shall bear the signature and seal of a professional engineer or an architect. Drawings and specifications to be signed and sealed

3. Section 25 of *The Industrial Safety Act, 1964* is repealed and the following substituted therefor: 1964, c. 45, s. 25, re-enacted

25. No person shall employ in an industrial establishment during school hours a person who is required under *The Schools Administration Act* to attend school. Employment of adolescents  
R.S.O. 1960, c. 361

Commence-  
ment

4. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

5. This Act may be cited as *The Industrial Safety Amendment Act, 1970*.









An Act to amend  
The Industrial Safety Act, 1964

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*1st Reading*

April 28th, 1970

*2nd Reading*

May 19th, 1970

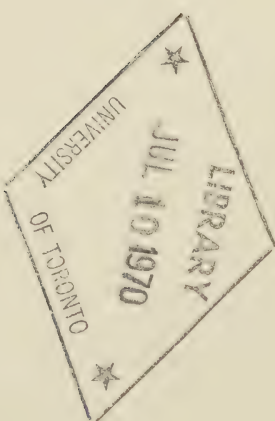
*3rd Reading*

May 26th, 1970

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Mr. BALES

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

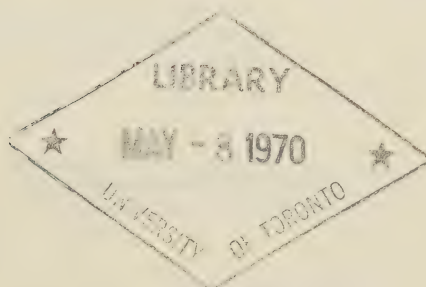
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**An Act to amend The Elevators and Lifts Act**

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MR. BALES

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#### EXPLANATORY NOTES

SECTION 1. "Elevator" is redefined to include a freight platform and "professional engineer" is defined.

SECTION 2. The amended section is brought into conformity with present administrative practice.

## BILL 73

1970

## An Act to amend The Elevators and Lifts Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause *f* of section 1 of *The Elevators and Lifts Act*, <sup>R.S.O. 1960, c. 119, s. 1,</sup> as amended by subsection 2 of section 1 of *The Elevators and Lifts Amendment Act, 1965*, is repealed and the following <sup>cl. *f*, re-enacted</sup> substituted therefor:

(*f*) “elevator” means a mechanism, including its hoistway enclosure, affixed to a building or structure and equipped with a car or platform that,

(i) moves in guides, or is otherwise guided, at an angle exceeding 70 degrees from the horizontal, and

(ii) is used to lift or lower persons or freight in or about the building or structure,

and includes a freight platform having a vertical travel in excess of sixty inches.

(2) The said section 1 is amended by adding thereto the <sup>R.S.O. 1960, c. 119, s. 1, amended</sup> following paragraph:

(*ra*) “professional engineer” means a person who is a member of the Association of Professional Engineers of the Province of Ontario or who is licensed to practise as a professional engineer under *The Professional Engineers Act, 1968-69*, <sup>c. 99</sup>

2. Section 6 of *The Elevators and Lifts Act*, as amended <sup>R.S.O. 1960, c. 119, s. 6, re-enacted</sup> by section 4 of *The Elevators and Lifts Amendment Act, 1965*, is repealed and the following substituted therefor:

6. Every elevator, dumb-waiter, escalator, manlift and <sup>Inspections</sup> incline lift shall be inspected at such intervals as may be determined by the chief inspector.

R.S.O. 1960,  
c. 119,  
amended

**3.** *The Elevators and Lifts Act* is amended by adding thereto the following section:

Inspector or  
engineer not  
liable

12a. No inspector or engineer of the Department is personally liable for anything done or omitted to be done by him in the performance of his duties under this Act or the regulations.

R.S.O. 1960,  
c. 119, s. 14,  
amended

**4.** Section 14 of *The Elevators and Lifts Act* is amended by adding thereto the following subsection:

Drawings  
and  
specifications  
to be signed  
and sealed

(2a) Drawings and specifications submitted under this section shall bear the signature and seal of a professional engineer.

R.S.O. 1960,  
c. 119, s. 24,  
subs. 1,  
amended

**5.** Subsection 1 of section 24 of *The Elevators and Lifts Act*, as amended by section 3 of *The Elevators and Lifts Amendment Act, 1961-62*, is further amended by striking out "\$1,000" in the amendment of 1961-62 and inserting in lieu thereof "\$5,000", so that the subsection shall read as follows:

Offence

(1) A person who contravenes any of the provisions of this Act or the regulations or any notice or order made thereunder is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

R.S.O. 1960,  
c. 119,  
amended

**6.** *The Elevators and Lifts Act* is amended by adding thereto the following section:

Limitation  
on prosecu-  
tion

24a. No prosecution under this Act shall be instituted more than one year after the last act or default upon which the prosecution is based occurred.

Commence-  
ment

**7.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

**8.** This Act may be cited as *The Elevators and Lifts Amendment Act, 1970*.



SECTION 3. Self-explanatory.

SECTION 4. Drawings and specifications are required to be signed and sealed by a professional engineer.

SECTION 5. The maximum penalty for an offence is increased from \$1000 to \$5000.

SECTION 6. A limitation period in respect of prosecutions is provided.





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**BILL 73**

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An Act to amend  
The Elevators and Lifts Act

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*1st Reading*

April 28th, 1970

*2nd Reading*

*3rd Reading*

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MR. BALES

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B  
B 56

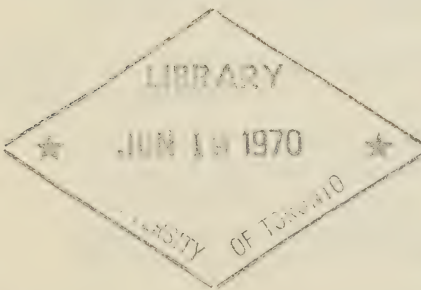
# BILL 73

Government  
Publications

3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

## An Act to amend The Elevators and Lifts Act

MR. BALES





BILL 73

1970

## An Act to amend The Elevators and Lifts Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause *f* of section 1 of *The Elevators and Lifts Act*,<sup>R.S.O. 1960, c. 119, s. 1, cl. f, re-enacted</sup> as amended by subsection 2 of section 1 of *The Elevators and Lifts Amendment Act, 1965*, is repealed and the following substituted therefor:

(*f*) “elevator” means a mechanism, including its hoistway enclosure, affixed to a building or structure and equipped with a car or platform that,

(i) moves in guides, or is otherwise guided, at an angle exceeding 70 degrees from the horizontal, and

(ii) is used to lift or lower persons or freight in or about the building or structure,

and includes a freight platform having a vertical travel in excess of sixty inches.

(2) The said section 1 is amended by adding thereto the following paragraph:<sup>R.S.O. 1960, c. 119, s. 1, amended</sup>

(*ra*) “professional engineer” means a person who is a member of the Association of Professional Engineers of the Province of Ontario or who is licensed to practise as a professional engineer under *The Professional Engineers Act, 1968-69*.<sup>1968-69, c. 99</sup>

2. Section 6 of *The Elevators and Lifts Act*, as amended<sup>R.S.O. 1960, c. 119, s. 6, re-enacted</sup> by section 4 of *The Elevators and Lifts Amendment Act, 1965*, is repealed and the following substituted therefor:

6. Every elevator, dumb-waiter, escalator, manlift and incline lift shall be inspected at such intervals as may be determined by the chief inspector.<sup>Inspections</sup>

R.S.O. 1960,  
c. 119,  
amended

**3.** *The Elevators and Lifts Act* is amended by adding thereto the following section:

Inspector or  
engineer not  
liable

12a. No inspector or engineer of the Department is personally liable for anything done or omitted to be done by him in the performance of his duties under this Act or the regulations.

R.S.O. 1960,  
c. 119, s. 14,  
amended

**4.** Section 14 of *The Elevators and Lifts Act* is amended by adding thereto the following subsection:

Drawings  
and  
specifications  
to be signed  
and sealed

(2a) Drawings and specifications submitted under this section shall bear the signature and seal of a professional engineer.

R.S.O. 1960,  
c. 119, s. 24,  
subs. 1,  
amended

**5.** Subsection 1 of section 24 of *The Elevators and Lifts Act*, as amended by section 3 of *The Elevators and Lifts Amendment Act, 1961-62*, is further amended by striking out "\$1,000" in the amendment of 1961-62 and inserting in lieu thereof "\$5,000", so that the subsection shall read as follows:

Offence

(1) A person who contravenes any of the provisions of this Act or the regulations or any notice or order made thereunder is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

R.S.O. 1960,  
c. 119,  
amended

**6.** *The Elevators and Lifts Act* is amended by adding thereto the following section:

Limitation  
on prosecu-  
tion

24a. No prosecution under this Act shall be instituted more than one year after the last act or default upon which the prosecution is based occurred.

Commence-  
ment

**7.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

**8.** This Act may be cited as *The Elevators and Lifts Amendment Act, 1970*.









An Act to amend  
The Elevators and Lifts Act

*1st Reading*

April 28th, 1970

*2nd Reading*

June 2nd, 1970

*3rd Reading*

June 3rd, 1970

MR. BALES



## BILL 74

3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

## An Act to amend The Election Act, 1968-69

MR. YOUNG

#### EXPLANATORY NOTE

The purpose of this Bill is to reduce the age of persons who may vote at provincial elections from twenty-one years to eighteen years.

BILL 74

1970

## An Act to amend The Election Act, 1968-69

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *a* of subsection 1 of section 9 of *The Election Act, 1968-69*, is amended by striking out "twenty-one" and inserting in lieu thereof "eighteen". 1968-69,  
c. 33, s. 9,  
subs. 1,  
cl. *a*,  
amended
2. This Act comes into force on the day it receives Royal Assent. Commence-  
ment
3. This Act may be cited as *The Election Amendment Act, 1970*. Short title

An Act to amend  
The Election Act, 1968-69

*1st Reading*

April 28th, 1970

*2nd Reading*

*3rd Reading*

MR. YOUNG



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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

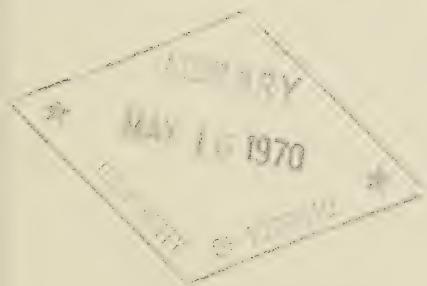
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**An Act to amend The Corporations Act**

---

MR. LAWRENCE (Carleton East)

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EXPLANATORY NOTE

The Bill is complementary to the Bill to enact *The Business Corporations Act, 1970*.

BILL 75

1970

## An Act to amend The Corporations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Corporations Act* is amended by adding thereto the following section: R.S.O. 1960, c. 71, amended

1a. This Act does not apply to a company to which Application  
*The Business Corporations Act, 1970* applies. 1970, c.

2. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation. Commence-  
ment

3. This Act may be cited as *The Corporations Amendment Act, 1970*. Short title

**BILL 75**

An Act to amend The Corporations Act

*1st Reading*

April 29th, 1970

*2nd Reading*

*3rd Reading*

MR. LAWRENCE (Carleton East)

A20N *Legislation Assembly*  
~~B~~

B 56

**BILL 75**

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to amend The Corporations Act**

---

MR. LAWRENCE (Carleton East)

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BILL 75

1970

## An Act to amend The Corporations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Corporations Act* is amended by adding thereto the following section: R.S.O. 1960, c. 71, amended

1a. This Act does not apply to a company to which *The Business Corporations Act, 1970* applies. Application 1970, c.

2. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation. Commence-ment

3. This Act may be cited as *The Corporations Amendment Act, 1970*. Short title

An Act to amend The Corporations Act

*1st Reading*

April 29th, 1970

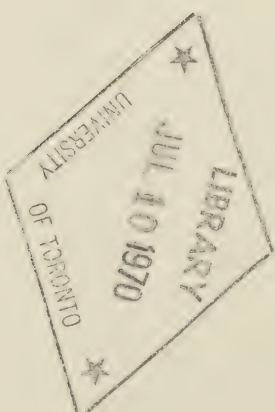
*2nd Reading*

June 9th, 1970

*3rd Reading*

June 9th, 1970

MR. LAWRENCE (Carleton East)



## BILL 76

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

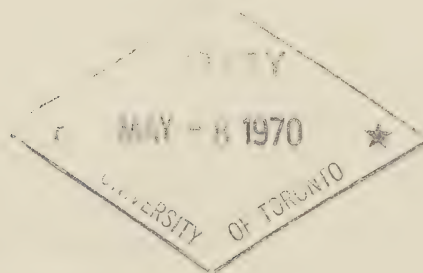
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### An Act respecting the making of Loans to Fishermen and Others affected by the Prohibition of Fishing resulting from Pollution of Waters

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MR. BRUNELLE

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#### EXPLANATORY NOTE

The Bill provides for loans to fishermen and others affected by the prohibition of the taking of fish by reason of pollution.



**An Act respecting the making of Loans to  
Fishermen and Others affected by the Prohibition  
of Fishing resulting from Pollution of  
Waters**

**W**HEREAS by reason of the contamination of fish <sup>Preamble</sup>  
resulting from the pollution of waters in Ontario it  
has and may become necessary to prohibit the taking of fish  
in waters in Ontario;

AND WHEREAS the prohibition of the taking of fish has  
created and may create temporary financial hardships to  
persons engaged in commercial fishing and other businesses  
dependent in whole or in part on the taking of fish;

Therefore, Her Majesty, by and with the advice and  
consent of the Legislative Assembly of the Province of  
Ontario, enacts as follows:

**1.** In this Act "Minister" means the Minister of Lands <sup>Interpre-</sup>  
and Forests. <sup>tation</sup>

**2.** The Minister on behalf of Her Majesty the Queen in <sup>Loans</sup>  
right of Ontario may make loans with or without interest in  
such amounts and upon such terms and conditions as he  
considers appropriate to a person carrying on the business of  
commercial fishing or any other business dependent in whole  
or in part on the taking of fish from waters in which such  
taking has been prohibited by reason of the contamination of  
fish resulting from pollution of the waters.

**3.** The Minister may on behalf of the Province of Ontario <sup>Agreements</sup>  
enter into agreements with the Government of Canada in  
respect of the payment to the Province of Ontario of a share  
of the principal and other cost of loans made under section 2  
and matters related to such loans on such terms and conditions  
as may be agreed upon.

**4.** The moneys required for the purposes of section 2 <sup>Funds</sup>  
shall be paid out of the Consolidated Revenue Fund.

Commence-  
ment

**5.** This Act shall be deemed to have come into force on the 20th day of April, 1970.

Short title

**6.** This Act may be cited as *The Fisheries Loans Act, 1970*.









---

An Act respecting the making of Loans to  
Fishermen and Others affected by the  
Prohibition of Fishing resulting from  
Pollution of Waters

---

*1st Reading*

April 29th, 1970

*2nd Reading*

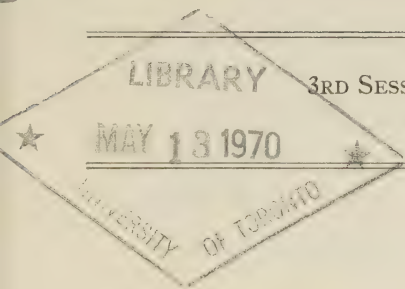
*3rd Reading*

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MR. BRUNELLE

---

BILL 76



3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

**An Act respecting the making of Loans to Fishermen and  
Others affected by the Prohibition of Fishing resulting from  
Pollution of Waters**

MR. BRUNELLE

*(Reprinted as amended by the Committee of the Whole House)*

#### EXPLANATORY NOTE

The Bill provides for loans to fishermen and others affected by the prohibition of the taking of fish by reason of pollution.

BILL 76

1970

**An Act respecting the making of Loans to  
Fishermen and Others affected by the Prohibi-  
tion of Fishing resulting from Pollution of  
Waters**



**W**HEREAS by reason of the contamination of fish <sup>Preamble</sup>  
resulting from the pollution of waters in Ontario it  
has and may become necessary to prohibit the taking of fish  
in waters in Ontario;

AND WHEREAS the prohibition of the taking of fish has  
created and may create temporary financial hardships to  
persons engaged in commercial fishing and other businesses  
dependent in whole or in part on the taking of fish;

Therefore, Her Majesty, by and with the advice and  
consent of the Legislative Assembly of the Province of  
Ontario, enacts as follows:

**1.** In this Act "Minister" means the Minister of Lands <sup>Interpre-</sup>  
and Forests. <sup>tation</sup>

**2.—(1)** The Minister on behalf of Her Majesty the Queen in <sup>Loans</sup>  
right of Ontario may make loans with or without interest in  
such amounts and upon such terms and conditions as he  
considers appropriate to a person carrying on the business of  
commercial fishing or any other business dependent in whole  
or in part on the taking of fish from waters in which such  
taking has been prohibited by reason of the contamination of  
fish resulting from pollution of the waters.

 **(2)** Where the Minister takes any action under this section, <sup>Minister</sup>  
he shall, quarterly or at the first appropriate time when <sup>to table</sup>  
the Assembly is sitting, table a report in connection <sup>report</sup>  
with such action and set out clearly in such a report the  
basis of the terms and conditions he considers appropriate  
in taking any such action. 

## Agreements

**3.** The Minister may on behalf of the Province of Ontario enter into agreements with the Government of Canada in respect of the payment to the Province of Ontario of a share of the principal and other cost of loans made under section 2 and matters related to such loans on such terms and conditions as may be agreed upon.

## Funds

**4.** The moneys required for the purposes of section 2 shall be paid out of the Consolidated Revenue Fund.

Commence-  
ment

**5.** This Act shall be deemed to have come into force on the 20th day of April, 1970.

## Short title

**6.** This Act may be cited as *The Fisheries Loans Act, 1970*.









An Act respecting the making of Loans to  
Fishermen and Others affected by the  
Prohibition of Fishing resulting from  
Pollution of Waters

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*1st Reading*

April 29th, 1970

*2nd Reading*

April 30th, 1970

*3rd Reading*

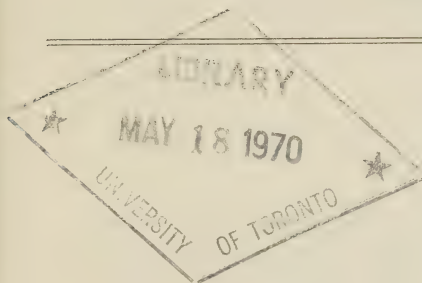
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MR. BRUNELLE

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*(Reprinted as amended by the  
Committee of the Whole House)*

3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970



**An Act respecting the making of Loans to Fishermen and  
Others affected by the Prohibition of Fishing resulting from  
Pollution of Waters**

MR. BRUNELLE





**An Act respecting the making of Loans to Fishermen and Others affected by the Prohibition of Fishing resulting from Pollution of Waters**

**W**HEREAS by reason of the contamination of fish <sup>Preamble</sup> resulting from the pollution of waters in Ontario it has and may become necessary to prohibit the taking of fish in waters in Ontario;

AND WHEREAS the prohibition of the taking of fish has created and may create temporary financial hardships to persons engaged in commercial fishing and other businesses dependent in whole or in part on the taking of fish;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act "Minister" means the Minister of Lands <sup>Interpre-</sup> and Forests. <sub>tation</sub>

**2.—(1)** The Minister on behalf of Her Majesty the Queen in <sup>Loans</sup> right of Ontario may make loans with or without interest in such amounts and upon such terms and conditions as he considers appropriate to a person carrying on the business of commercial fishing or any other business dependent in whole or in part on the taking of fish from waters in which such taking has been prohibited by reason of the contamination of fish resulting from pollution of the waters.

**(2)** Where the Minister takes any action under this section, he shall, quarterly or at the first appropriate time when <sup>Minister</sup> the Assembly is sitting, table a report in connection <sub>to table</sub> with such action and set out clearly in such a report the basis of the terms and conditions he considers appropriate in taking any such action. <sub>report</sub>

- Agreements**      **3.** The Minister may on behalf of the Province of Ontario enter into agreements with the Government of Canada in respect of the payment to the Province of Ontario of a share of the principal and other cost of loans made under section 2 and matters related to such loans on such terms and conditions as may be agreed upon.
- Funds**            **4.** The moneys required for the purposes of section 2 shall be paid out of the Consolidated Revenue Fund.
- Commence-  
ment**            **5.** This Act shall be deemed to have come into force on the 20th day of April, 1970.
- Short title**      **6.** This Act may be cited as *The Fisheries Loans Act, 1970*.









An Act respecting the making of Loans to  
Fishermen and Others affected by the  
Prohibition of Fishing resulting from  
Pollution of Waters

---

*1st Reading*

April 29th, 1970

*2nd Reading*

April 30th, 1970

*3rd Reading*

May 4th, 1970

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MR. BRUNELLE

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

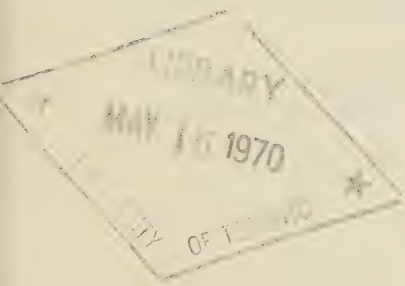
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**An Act to amend The Workmen's Compensation Act**

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MR. MARTEL

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#### EXPLANATORY NOTE

Where a workman has an industrial disease and there is a time lag between its incurrence and its effects, the amendment requires him to be compensated on the basis of the scale of pay when the disability takes effect, and not on the scale of pay when it was incurred.

BILL 77

1970

## An Act to amend The Workmen's Compensation Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 116 of *The Workmen's Compensation Act*, as amended by section 22 of *The Workmen's Compensation Amendment Act, 1968*, is further amended by adding thereto the following subsection:

(6a) For the purposes of fixing the amount of the compensation, the accident shall be deemed to have occurred at the time the application for compensation is made and the average earnings shall be deemed to be at the rate being earned by a person in the same grade employed in the same work in the same locality at the time of the application.

**2.** This Act comes into force on the day it receives Royal Assent.

**3.** This Act may be cited as *The Workmen's Compensation Amendment Act, 1970*.



Bill 77  
  
An Act to amend  
The Workmen's Compensation Act

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*1st Reading*

April 30th, 1970

*2nd Reading*

*3rd Reading*

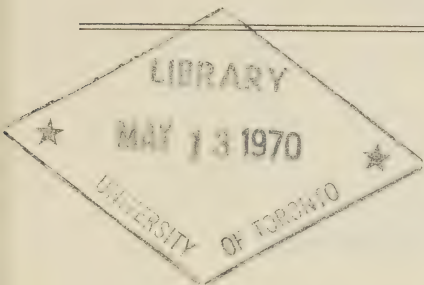
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MR. MARTEL

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BILL 78

3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970



An Act to amend The Human Tissue Act, 1962-63

Mr. BURR

#### EXPLANATORY NOTES

SECTION 1. The amendment permits the use of a donor's body without the authorization of next of kin where he dies outside a hospital.

SECTIONS 2 and 3. The amendments permit the use of a body of a person who is not a donor to be authorized by the nearest class of next of kin who are available, notwithstanding that persons in a closer relationship exist but are not available.

BILL 78

1970

## An Act to amend The Human Tissue Act, 1962-63

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 3 of *The Human Tissue Act, 1962-63* is repealed and the following substituted therefor: 1962-63,  
c. 59, s. 3,  
re-enacted

3. Where a donor dies in a place other than a hospital, the first person who has knowledge of the death and also that the deceased is a donor shall immediately notify the coroner who may authorize and require that the body be handed over to such hospital or other institution as the coroner designates as appropriate for the purposes of the donor's request. Death  
outside  
hospital

2. Section 4 of *The Human Tissue Act, 1962-63* is amended by adding thereto the following subsection: 1962-63,  
c. 59, s. 4,  
amended

- (2) Where the person required to give the authorization referred to in subsection 1 is not available within the time necessary for effective use of the body, the next succeeding person referred to in subsection 1 who is available may give the authorization. Where not  
available

3. Section 4a of *The Human Tissue Act, 1962-63*, as enacted by section 1 of *The Human Tissue Amendment Act, 1967*, is amended by adding thereto the following subsection: 1962-63,  
c. 59, s. 4a  
(1967, c. 38,  
s. 1),  
amended

- (3) Where the person required to give the authorization referred to in subsection 1 is not available within the time necessary for effective use of the body, the next succeeding person referred to in subsection 1 who is available may give the authorization. Where not  
available

4. This Act comes into force on the day it receives Royal Assent. Commence-  
ment

5. This Act may be cited as *The Human Tissue Amendment Act, 1970*. Short title

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An Act to amend  
The Human Tissue Act, 1962-63

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*1st Reading*

May 1st, 1970

*2nd Reading*

*3rd Reading*

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MR. BURR

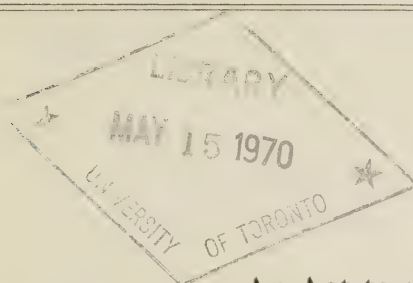
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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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**An Act to provide for the  
Preservation of the Niagara Escarpment and its Vicinity**

---

MR. LAWRENCE (St. George)

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#### EXPLANATORY NOTE

The purpose of the Bill is to preserve the nature of the Niagara escarpment against encroachment that cannot be restored.

BILL 79

1970

## An Act to provide for the Preservation of the Niagara Escarpment and its Vicinity

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

(a) "Commissioner" means the Mining Commissioner appointed under *The Mining Act*;

R.S.O. 1960,  
c. 241

(b) "mine" means a mine as defined in *The Mining Act*;

(c) "Minister" means the Minister of Mines and Northern Affairs;

(d) "protected zone" means the lands to which this Act applies.

**2.** This Act applies to such lands in the geographic townships of Niagara, Stamford, Grantham, Thorold, Pelham, Louth, Clinton, North Grimsby, Saltfleet, Barton, Ancaster, Beverly, West Flamborough, East Flamborough, Nelson, Nassagaweya, Esquesing, Erin, Chinguacousy, Caledon, Albion, Mono, Adjala, Mulmur, Osprey, Nottawasaga, Collingwood, Artemesia, Euphrasia, St. Vincent, Holland, Sydenham, Derby, Keppel, Sarawak, Amabel, Albermarle, Eastnor, Lindsay and St. Edmunds as are designated by the regulations under this Act.

Application  
of Act

**3.—**(1) No person shall open or operate a mine in the protected zone unless he is the holder of a permit issued by the Minister.

Permit

(2) Where a person was operating a mine in the protected zone immediately before this section comes into force, subsection 1 does not apply until ninety days after this section comes into force.

Idem

Site plan

**4.** An application for a permit shall be accompanied by a site plan that includes,

- (a) the true shape, topography, contours, dimensions, acreage and location of the property owned or under lease and held for present or future pit or quarry operations;
- (b) the use of all land and the location and use of all buildings and structures lying within a distance of 500 feet of pit or quarry property boundaries;
- (c) the location, height, dimensions and use of all buildings or structures existing or proposed to be erected on the property;
- (d) existing and anticipated final grades of excavation, contours where necessary and excavation set backs;
- (e) drainage provisions;
- (f) all entrances and exits;
- (g) as far as possible, ultimate pit development, progressive and ultimate road plan, any water diversion or storage, location of stockpiles for stripping and products, progressive and ultimate rehabilitation and, where possible, intended use of the land after the extractive operations have ceased; and
- (h) such other information as the Minister may require or as is prescribed by the regulations.

Refusal to  
issue permit

**5.—**(1) The Minister may refuse to issue a permit where, in his opinion, the operation of the mine would be against the interest of the public in preserving the character of the formation that includes the Niagara escarpment and the availability of its natural attributes for enjoyment by the public.

Conditions  
of permit

(2) The Minister may attach such terms and conditions to the issuance of a permit as, in his opinion, are necessary for the interest of the public referred to in subsection 1.

Revocation  
of permit

**6.** The Minister may revoke a permit issued under this Act if the permittee has contravened this Act or has failed to comply with the terms and conditions of the permit.

Hearing

**7.—**(1) Subject to section 8, before refusing to issue a permit under section 5 or before revoking a permit, the Minister shall refer the matter to the Commissioner for a hearing and report.

(2) Pursuant to a reference by the Minister under this <sup>Idem</sup> section, the Commissioner shall hold a hearing as to whether the permit to which the hearing relates, should be issued or should be revoked, as the case may be, and the applicant or permittee and such other persons as the Commissioner specifies shall be parties to the hearing.

(3) A hearing by the Commissioner shall be conducted in <sup>Procedure</sup> accordance with the rules, practices and procedures applicable to proceedings before the Commissioner under Part VIII of *The Mining Act*. <sup>R.S.O. 1960, c. 241</sup>

(4) The Commissioner may obtain the assistance of <sup>Expert assistance</sup> engineers, surveyors or other scientific persons who may under his order view and examine the property in question, and in making his report he may give such weight to their opinion or report as he considers proper.

(5) The Commissioner shall, at the conclusion of a hearing <sup>Report of Commissioner</sup> under this section, make a report to the Minister which shall set out his findings of fact and any information or knowledge used by him in reaching his recommendations, any conclusions of law he has arrived at relevant to his recommendations, and his recommendations as to the issue or revocation of the permit to which the hearing relates, as the case may be, and shall send a copy of his report to the applicant or permittee to whom it relates.

(6) After considering the report of the Commissioner under this section, the Minister may refuse to issue or may revoke <sup>Decision of Minister</sup> the permit to which the report relates and shall within thirty days after he receives the report of the Commissioner give notice of his decision to the applicant or permittee specifying the reasons therefor, and, subject to subsection 7, the decision of the Minister is final.

(7) Any person whose permit or right to a permit is affected <sup>Appeal</sup> by a decision of the Minister may appeal the decision on any point of law to a judge of the Court of Appeal.

**8.** Where the Minister refers the matter of a revocation of a <sup>Interim suspension</sup> permit to the Commissioner for a hearing and report and, in the opinion of the Minister, the continuation of the mining operation constitutes an immediate threat to the interest of the public referred to in section 5, the Minister may, upon notice to the permittee, provisionally suspend the permit pending the final disposition of the matter.



Quarrying near escarpment	<b>9.</b> —(1) Notwithstanding that a permit has been issued under this Act, no person shall quarry in the Amabel or Lockport Formation in the protected zone at any point nearer to the natural edge of the Niagara escarpment than 300 feet measured horizontally.
Idem	(2) For the purposes of this section, the Amabel and Lockport Formations are as defined in Geological Survey of Canada Memoir 289, 1957, entitled "Silurian Stratigraphy and Paleontology of the Niagara Escarpment in Ontario".
Order of compliance	<b>10.</b> —(1) Where it appears to the Minister that any person does not comply with any provision of this Act, notwithstanding the imposition of any penalty in respect of such non-compliance, the Minister may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order as he thinks fit.
Appeal	(2) An appeal lies to the Court of Appeal from an order made under subsection 1.
Penalty	<b>11.</b> —(1) Every person who contravenes section 3 or 9 or fails to comply with the terms and conditions of a permit is guilty of an offence against this Act and is liable to a fine of not more than \$5,000 for every day upon which the offence occurs or continues.
Idem R.S.O. 1960, c. 241	(2) Section 626 of <i>The Mining Act</i> applies to offences against this Act.
Regulations	<b>12.</b> The Lieutenant Governor in Council may make regulations, <ul style="list-style-type: none"> <li>(a) designating lands for the purposes of section 2;</li> <li>(b) governing applications for permits and providing for their issue;</li> <li>(c) prescribing additional information to be included on site plans under section 4;</li> <li>(d) prescribing forms for the purposes of this Act and providing for their use.</li> </ul>
Commence- ment	<b>13.</b> This Act comes into force on the day it receives Royal Assent.
Short title	<b>14.</b> This Act may be cited as <i>The Niagara Escarpment Protection Act, 1970</i> .



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An Act to provide for the Preservation of  
the Niagara Escarpment and its Vicinity

---

*1st Reading*

May 6th, 1970

*2nd Reading*

*3rd Reading*

---

Mr. LAWRENCE (St. George)

---

BILL 79

3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

An Act to provide for the  
Preservation of the Niagara Escarpment and its Vicinity

MR. LAWRENCE (St. George)



*(Reprinted as amended by the Committee of the Whole House)*

#### EXPLANATORY NOTE

The purpose of the Bill is to preserve the nature of the Niagara escarpment against encroachment that cannot be restored.



BILL 79

1970

## An Act to provide for the Preservation of the Niagara Escarpment and its Vicinity

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

(a) "Commissioner" means the Mining Commissioner appointed under *The Mining Act*;

R.S.O. 1960,  
c. 241

(b) "mine" means a mine as defined in *The Mining Act*;

(c) "Minister" means the Minister of Mines and Northern Affairs;

(d) "protected zone" means the lands to which this Act applies.

**2.** This Act applies to such lands in the geographic townships of Niagara, Stamford, Grantham, Thorold, Pelham, Louth, Clinton, North Grimsby, Saltfleet, Barton, Ancaster, Beverly, West Flamborough, East Flamborough, Nelson, Nassagaweya, Esquesing, Erin, Chinguacousy, Caledon, Albion, Mono, Adjala, Mulmur, Osprey, Nottawasaga, Collingwood, Artemesia, Euphrasia, St. Vincent, Holland, Sydenham, Derby, Keppel, Sarawak, Amabel, Albermarle, Eastnor, Lindsay and St. Edmunds as are designated by the regulations under this Act.

Application  
of Act

**3.—(1)** No person shall open or operate a mine in the protected zone unless he is the holder of a permit issued by the Minister.

Permit

(2) Where a person was operating a mine in the protected zone on the 6th day of May, 1970 subsection 1 does not apply until ninety days after this section comes into force.

Idem

Site plan

**4.** An application for a permit shall be accompanied by a site plan that includes,

- (a) the true shape, topography, contours, dimensions, acreage and location of the property owned or under lease and held for present or future pit or quarry operations;
- (b) the use or the proposed use of all land and the location and use or the proposed use of all buildings and structures lying within a distance of 500 feet of pit or quarry property boundaries;
- (c) the location, height, dimensions and use of all buildings or structures existing or proposed to be erected on the property;
- (d) existing and anticipated final grades of excavation, contours where necessary and excavation set backs;
- (e) drainage provisions;
- (f) all entrances and exits;
- (g) as far as possible, ultimate pit development, progressive and ultimate road plan, any water diversion or storage, location of stockpiles for stripping and products, progressive and ultimate rehabilitation and, where possible, intended use of the land after the extractive operations have ceased; and
- (h) such other information as the Minister may require or as is prescribed by the regulations.

Refusal to  
issue permit

**5.—(1)** The Minister may refuse to issue a permit where, in his opinion, the operation of the mine would be against the interest of the public in preserving the character of the formation that includes the Niagara escarpment and the availability of its natural attributes for enjoyment by the public.

Conditions  
of permit

**(2)** The Minister may attach such terms and conditions to the issuance of a permit as, in his opinion, are necessary for the interest of the public referred to in subsection 1.

Revocation  
of permit

**6.** The Minister may revoke a permit issued under this Act if the permittee has contravened this Act or has failed to comply with the terms and conditions of the permit.

Hearing

**7.—(1)** Subject to section 8, before refusing to issue a permit under section 5 or before revoking a permit, the Minister shall refer the matter to the Commissioner for a hearing and report.

(2) Pursuant to a reference by the Minister under this section, the Commissioner shall hold a hearing as to whether the permit to which the hearing relates, should be issued or should be revoked, as the case may be, and the applicant or permittee and such other persons as the Commissioner specifies shall be parties to the hearing. <sup>Idem</sup>

(3) A hearing by the Commissioner shall be conducted in accordance with the rules, practices and procedures applicable to proceedings before the Commissioner under Part VIII of *The Mining Act*. <sup>Procedure</sup> <sup>R.S.O. 1960, c. 241</sup>

(4) The Commissioner may obtain the assistance of engineers, surveyors or other scientific persons who may under his order view and examine the property in question, and in making his report he may give such weight to their opinion or report as he considers proper. <sup>Expert assistance</sup>

(5) The Commissioner shall, at the conclusion of a hearing under this section, make a report to the Minister which shall set out his findings of fact and any information or knowledge used by him in reaching his recommendations, any conclusions of law he has arrived at relevant to his recommendations, and his recommendations as to the issue or revocation of the permit to which the hearing relates, as the case may be, and shall send a copy of his report to the applicant or permittee to whom it relates. <sup>Report of Commissioner</sup>

(6) After considering the report of the Commissioner under this section, the Minister may refuse to issue or may revoke the permit to which the report relates and shall within thirty days after he receives the report of the Commissioner give notice of his decision to the applicant or permittee specifying the reasons therefor, and, subject to subsection 7, the decision of the Minister is final. <sup>Decision of Minister</sup>

(7) Any person whose permit or right to a permit is affected by a decision of the Minister may appeal the decision on any point of law to a judge of the Court of Appeal. <sup>Appeal</sup>

8. Where the Minister refers the matter of a revocation of a permit to the Commissioner for a hearing and report and, in the opinion of the Minister, the continuation of the mining operation constitutes an immediate threat to the interest of the public referred to in section 5, the Minister may, upon notice to the permittee, provisionally suspend the permit pending the final disposition of the matter. <sup>Interim suspension</sup>

Quarrying  
near  
escarpment

**9.**—(1) Notwithstanding that a permit has been issued under this Act, no person shall quarry in the Amabel or Lockport Formation in the protected zone at any point nearer to the natural edge of the Niagara escarpment than 300 feet measured horizontally.

Idem

(2) For the purposes of this section, the Amabel and Lockport Formations are as defined in Geological Survey of Canada Memoir 289, 1957, entitled "Silurian Stratigraphy and Palaeontology of the Niagara Escarpment".

Order of  
compliance

**10.**—(1) Where it appears to the Minister that any person does not comply with any provision of this Act, notwithstanding the imposition of any penalty in respect of such non-compliance, the Minister may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order as he thinks fit.

Appeal

(2) An appeal lies to the Court of Appeal from an order made under subsection 1.

Penalty

**11.**—(1) Every person who contravenes section 3 or 9 or fails to comply with the terms and conditions of a permit is guilty of an offence against this Act and is liable to a fine of not more than \$5,000 for every day upon which the offence occurs or continues.

Idem  
R.S.O. 1960,  
c. 241

(2) Section 626 of *The Mining Act* applies to offences against this Act.

Regulations

**12.** The Lieutenant Governor in Council may make regulations,

- (a) designating lands for the purposes of section 2;
- (b) governing applications for permits and providing for their issue;
- (c) prescribing additional information to be included on site plans under section 4;
- (d) prescribing forms for the purposes of this Act and providing for their use.

Commence-  
ment

**13.** This Act comes into force on the day it receives Royal Assent.

Short title

**14.** This Act may be cited as *The Niagara Escarpment Protection Act, 1970*.





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An Act to provide for the Preservation of  
the Niagara Escarpment and its Vicinity

---

*1st Reading*

May 6th, 1970

*2nd Reading*

June 2nd, 1970

*3rd Reading*

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MR. LAWRENCE (St. George)

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*(Reprinted as amended by the  
Committee of the Whole House)*

## BILL 79

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3RD SESSION, 28TH LEGISLATURE, ONTARIO  
19 ELIZABETH II, 1970

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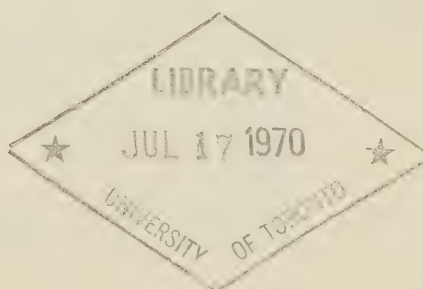
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**An Act to provide for the  
Preservation of the Niagara Escarpment and its Vicinity**

---

MR. LAWRENCE (St. George)

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BILL 79

1970

## An Act to provide for the Preservation of the Niagara Escarpment and its Vicinity

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

(a) "Commissioner" means the Mining Commissioner appointed under *The Mining Act*;

R.S.O. 1960,  
c. 241

(b) "mine" means a mine as defined in *The Mining Act*;

(c) "Minister" means the Minister of Mines and Northern Affairs;

(d) "protected zone" means the lands to which this Act applies.

**2.** This Act applies to such lands in the geographic town-  
ships of Niagara, Stamford, Grantham, Thorold, Pelham, Application  
of Act  
Louth, Clinton, North Grimsby, Saltfleet, Barton, Ancaster,  
Beverly, West Flamborough, East Flamborough, Nelson,  
Nassagaweya, Esquesing, Erin, Chinguacousy, Caledon,  
Albion, Mono, Adjala, Mulmur, Osprey, Nottawasaga,  
Collingwood, Artemesia, Euphrasia, St. Vincent, Holland,  
Sydenham, Derby, Keppel, Sarawak, Amabel, Albermarle,  
Eastnor, Lindsay and St. Edmunds as are designated by  
the regulations under this Act.

**3.—(1)** No person shall open or operate a mine in the Permit  
protected zone unless he is the holder of a permit issued by  
the Minister.

(2) Where a person was operating a mine in the protected Idem  
zone on the 6th day of May, 1970 subsection 1 does not apply  
until ninety days after this section comes into force.

Site plan

**4.** An application for a permit shall be accompanied by a site plan that includes,

- (a) the true shape, topography, contours, dimensions, acreage and location of the property owned or under lease and held for present or future pit or quarry operations;
- (b) the use or the proposed use of all land and the location and use or the proposed use of all buildings and structures lying within a distance of 500 feet of pit or quarry property boundaries;
- (c) the location, height, dimensions and use of all buildings or structures existing or proposed to be erected on the property;
- (d) existing and anticipated final grades of excavation, contours where necessary and excavation set backs;
- (e) drainage provisions;
- (f) all entrances and exits;
- (g) as far as possible, ultimate pit development, progressive and ultimate road plan, any water diversion or storage, location of stockpiles for stripping and products, progressive and ultimate rehabilitation and, where possible, intended use of the land after the extractive operations have ceased; and
- (h) such other information as the Minister may require or as is prescribed by the regulations.

Refusal to  
issue permit

**5.—**(1) The Minister may refuse to issue a permit where, in his opinion, the operation of the mine would be against the interest of the public in preserving the character of the formation that includes the Niagara escarpment and the availability of its natural attributes for enjoyment by the public.

Conditions  
of permit

(2) The Minister may attach such terms and conditions to the issuance of a permit as, in his opinion, are necessary for the interest of the public referred to in subsection 1.

Revocation  
of permit

**6.** The Minister may revoke a permit issued under this Act if the permittee has contravened this Act or has failed to comply with the terms and conditions of the permit.

Hearing

**7.—**(1) Subject to section 8, before refusing to issue a permit under section 5 or before revoking a permit, the Minister shall refer the matter to the Commissioner for a hearing and report.



(2) Pursuant to a reference by the Minister under this <sup>Idem</sup> section, the Commissioner shall hold a hearing as to whether the permit to which the hearing relates, should be issued or should be revoked, as the case may be, and the applicant or permittee and such other persons as the Commissioner specifies shall be parties to the hearing.

(3) A hearing by the Commissioner shall be conducted in <sup>Procedure</sup> accordance with the rules, practices and procedures applicable to proceedings before the Commissioner under Part VIII of *The Mining Act*. <sup>R.S.O. 1960, c. 241</sup>

(4) The Commissioner may obtain the assistance of <sup>Expert assistance</sup> engineers, surveyors or other scientific persons who may under his order view and examine the property in question, and in making his report he may give such weight to their opinion or report as he considers proper.

(5) The Commissioner shall, at the conclusion of a hearing <sup>Report of Commissioner</sup> under this section, make a report to the Minister which shall set out his findings of fact and any information or knowledge used by him in reaching his recommendations, any conclusions of law he has arrived at relevant to his recommendations, and his recommendations as to the issue or revocation of the permit to which the hearing relates, as the case may be, and shall send a copy of his report to the applicant or permittee to whom it relates.

(6) After considering the report of the Commissioner under this section, the Minister may refuse to issue or may revoke the permit to which the report relates and shall within thirty days after he receives the report of the Commissioner give notice of his decision to the applicant or permittee specifying the reasons therefor, and, subject to subsection 7, the decision of the Minister is final. <sup>Decision of Minister</sup>

(7) Any person whose permit or right to a permit is affected <sup>Appeal</sup> by a decision of the Minister may appeal the decision on any point of law to a judge of the Court of Appeal.

8. Where the Minister refers the matter of a revocation of a <sup>Interim suspension</sup> permit to the Commissioner for a hearing and report and, in the opinion of the Minister, the continuation of the mining operation constitutes an immediate threat to the interest of the public referred to in section 5, the Minister may, upon notice to the permittee, provisionally suspend the permit pending the final disposition of the matter.

Quarrying  
near  
escarpment

**9.**—(1) Notwithstanding that a permit has been issued under this Act, no person shall quarry in the Amabel or Lockport Formation in the protected zone at any point nearer to the natural edge of the Niagara escarpment than 300 feet measured horizontally.

Idem

(2) For the purposes of this section, the Amabel and Lockport Formations are as defined in Geological Survey of Canada Memoir 289, 1957, entitled "Silurian Stratigraphy and Palaeontology of the Niagara Escarpment".

Order of  
compliance

**10.**—(1) Where it appears to the Minister that any person does not comply with any provision of this Act, notwithstanding the imposition of any penalty in respect of such non-compliance, the Minister may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order as he thinks fit.

Appeal

(2) An appeal lies to the Court of Appeal from an order made under subsection 1.

Penalty

**11.**—(1) Every person who contravenes section 3 or 9 or fails to comply with the terms and conditions of a permit is guilty of an offence against this Act and is liable to a fine of not more than \$5,000 for every day upon which the offence occurs or continues.

Idem  
R.S.O. 1960,  
c. 241

(2) Section 626 of *The Mining Act* applies to offences against this Act.

Regulations

**12.** The Lieutenant Governor in Council may make regulations,

- (a) designating lands for the purposes of section 2;
- (b) governing applications for permits and providing for their issue;
- (c) prescribing additional information to be included on site plans under section 4;
- (d) prescribing forms for the purposes of this Act and providing for their use.

Commence-  
ment

**13.** This Act comes into force on the day it receives Royal Assent.

Short title

**14.** This Act may be cited as *The Niagara Escarpment Protection Act, 1970*.



An Act to provide for the Preservation of  
the Niagara Escarpment and its Vicinity

*1st Reading*

May 6th, 1970

*2nd Reading*

June 2nd, 1970

*3rd Reading*

June 25th, 1970

Mr. LAWRENCE (St. George)













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